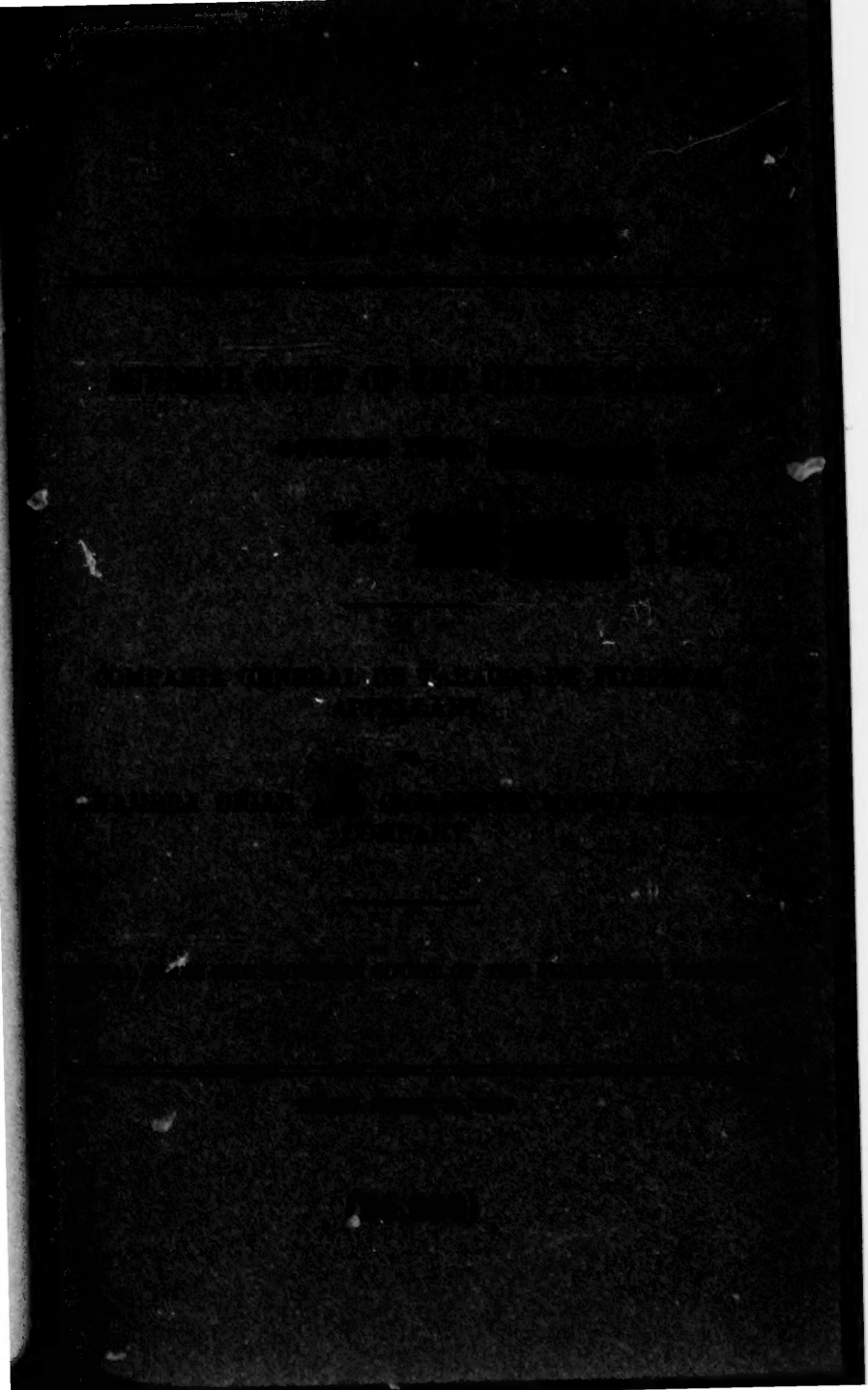

(25,930)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 1100.

COMPANIA GENERAL DE TABACOS DE FILIPINAS, APPELLANT,

vs.

ALHAMBRA CIGAR AND CIGARETTE MANUFACTURING COMPANY.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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1 United States Supreme Court.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellant,

versus

ALHAMBRA CIGAR AND CIGARETTE MANUFACTURING CO., Defendant and Appellee.

UNITED STATES OF AMERICA,
Philippine Islands, ss:

Record of Proceedings of the Supreme Court of the Philippine Islands, and of the Court of First Instance of the City of Manila in the Philippine Islands, in the cause and matter hereinabove entitled and hereinafter stated; and the same being disposed of at a regular term of said Supreme Court on the 10th day of February, 1916.

Present, the Honorable Chief Justice of said Supreme Court of the Philippine Islands, and the Honorable Associate Justices thereof.

R. G. No. 10251. In Equity.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff,

vs.

ALHAMBRA CIGAR AND CIGARETTE MANUFACTURING CO., Defendant.

Said action was commenced on the 30th day of July, 1914, and proceeded to final disposition at the time and day above written and during the progress thereof pleadings and papers were filed and process was issued and returned, and orders of the court were made and entered in the order and on the dates hereinafter stated to-wit:

That on the 30th day of July, 1914, the plaintiff filed its complaint in the Court a copy of which is as follows:

2 (Title of Court and Cause.)

Complaint.

Now comes the plaintiff in the above entitled action and, complaining of the defendant herein, for cause of action alleges:

I.

That the plaintiff is now, and at all of the times hereinafter mentioned has been, a corporation duly organized and existing under and

by virtue of the laws of the Kingdom of Spain and duly registered and licensed for the transaction of business in the Philippine Islands.

II.

That the defendant is now, and at all of the times hereinafter mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the Philippine Islands.

III.

That the plaintiff company is now, and for more than 27 years last past has been, engaged in the business of manufacturing in the Philippine Islands, and marketing throughout the world, cigars, cigarettes and other products of Philippine tobacco, maintaining for that purpose the largest factory of its kind in the world.

IV.

That said factory so operated and maintained by the plaintiff has at all times been denominated and known, and is now denominated and known, as "La Flor de la Isabela", and said designation and denomination has been freely, generally and continuously employed and used by plaintiff upon the packages and containers of the products manufactured and marketed by plaintiff and upon the stationery, signs, and other advertising media of the plaintiff.

3 V.

That heretofore, to-wit: on the 5th day of April, 1887, the Kingdom of Spain as the sovereign authority in the Philippine Islands, duly issued and made in favor of this plaintiff, a certificate of registration and ownership in and to the phrase "La Flor de la Isabela" conferring the right upon plaintiff to all of the benefits appurtenant thereto, including the right to prosecute in the Courts of Justice all infringers and usurpers of said rights. That said certificate of registration and ownership has not been annulled by the royal decree of 1888, and the plaintiff is now and at all the times herein mentioned has continued to have the exclusive right of ownership of the said phrase "La Flor de la Isabela" as a trade-name in respect to manufactures of tobacco, to which, by the terms of said registration, the said trade-name applies.

VI.

That the original and primary meaning of the words "Isabela" and "La Isabela" is the name and designation of one of the provinces in the Philippine Islands. That by reason of the general, long-continued and extensive use and employment of said phrase "La Flor de la Isabela", the said phrase, and various and sundry abbreviations thereof, including the word "Isabela", when applied to the

manufactures of tobacco as a distinguishing brand or name, have come to have and do have a special secondary meaning, designating and denoting that said manufactures are the products of the factory of this plaintiff. That said secondary meaning of said phrase, and its abbreviation is well and generally and familiarly known and understood among the dealers in and consumers of tobacco products not only throughout the Philippine Islands, but in sundry
4 and various portions of the world where the products of the said factory of plaintiff have been dealt in and consumed.

VII.

That during the 27 years last past, and until the wrongful and unlawful acts of the defendant hereinafter specified, no other manufacturer or dealer in the Philippine Islands has used or employed, the said phrase, or any of its various abbreviations including the word "Isabelas", as a distinguishing brand or name or in any wise other than in the primary meaning thereof as the place of origin of the materials contained in the wares and merchandise of said dealers.

VIII.

That heretofore, to-wit: on or about the first day of June, 1914, the defendant company, wrongfully and unlawfully misappropriated to its own use and benefit, the word "Isabelas", in its secondary meaning and as a distinguishing brand or name of its tobacco products, and on said date and at all times since has been, and now is, engaged in manufacturing, packing, marketing and offering for sale, in the City of Manila, and elsewhere in the Philippine Islands, packages of cigarettes under the name and style of "Isabelas" and upon which said packages, in addition to the lawful statement that the contents thereof are manufactured from the tobacco of La Isabela Province, the said defendant has caused to appear, in prominent characters the name "Isabelas" as the distinguishing brand or name thereof.

IX.

That the said unlawful and wrongful use of the said name "Isabelas" as the distinguishing brand or name of the products of the defendant is calculated to deceive the public into the belief that the goods of the defendant so designated and branded are the goods manufactured or dealt in by this plaintiff, and the use thereof by said defendant will cause the said plaintiff continuous, irrep-
5 arable and immeasurable injury.

X.

That unless restrained and prohibited by the order of this Court, the defendant will continue in the unlawful use and employment of said brand or name to the injury of this plaintiff as aforesaid.

And for a further, separate and distinct cause of action, plaintiff alleges:

I.

That the plaintiff is now, and at all the times hereinafter mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the Kingdom of Spain and duly registered and licensed for the transaction of business in the Philippine Islands.

II.

That the defendant is now, and at all of the times hereinafter mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the Philippine Islands.

III.

That the plaintiff company is now, and for more than 27 years last past has been, engaged in the business of manufacturing in the Philippine Islands, and marketing throughout the world, cigars, cigarettes and other products of Philippine tobacco, maintaining for that purpose the largest factory of its kind in the world.

IV.

That said factory so operated and maintained by this plaintiff has at all times been denominated and known, and is now denominated and known, as "La Flor de la Isabela," and said designation and denomination has been freely, generally and continuously employed and used by plaintiff upon the packages and containers of the
6 products manufactured and marketed by plaintiff and upon the stationery, signs and other advertising media of the plaintiff.

V.

That heretofore, to-wit: on the 5th day of April, 1887, the Kingdom of Spain as the sovereign authority in the Philippine Islands, duly issued and made in favor of this plaintiff, a certificate of registration and ownership in and to the phrase "La Flor de la Isabela" conferring the right upon plaintiff to all of the benefits appurtenant thereto, including the right to prosecute in the Courts of Justice all infringers and usurpers of said right. That said certificate of registration and ownership has not been annulled by the royal decree of 1888, and the plaintiff is now and at all the times herein mentioned has continued to have the exclusive right of ownership of the said phrase "La Flor de la Isabela" as a trade-name in respect to manufactures of tobacco, to which, by the terms of said registration, the said trade-name applies.

VI.

That the original and primary meaning of the words "Isabela" and "La Isabela" is the name and designation of one of the provinces in the Philippine Islands. That by reason of the general, long-continued and extensive use and employment of said phrase "La Flor de la Isabela", the said phrase, and various and sundry abbreviations thereof, including the word "Isabelas", when applied to the manufactures of tobacco as a distinguishing brand or name, have come to have and do have a special secondary meaning, designating and denoting that said manufactures are the products of the factory of this plaintiff. That said secondary meaning of said phrase, and its abbreviations is well and generally and familiarly known and understood among the dealers in and consumers of tobacco products not only throughout the Philippine Islands, but in sundry and various portions of the world where the products of the said
7 factory of plaintiff have been dealt in and consumed.

VII.

That under and in pursuance of the general acceptance of the term "Isabelas" as the designation of the products of the factory of this plaintiff, the said plaintiff has adopted and appropriated the said word "Isabelas" as a distinguishing brand or name, and during more than 20 years last past has been manufacturing, packing, marketing, and offering for sale, certain cigarettes under the name and style of "Isabelas".

VIII.

That by reason of the facts aforesaid, the said word "Isabelas," as a distinguishing brand or name, has come to be and is the name by which the said cigarettes so manufactured and marketed by plaintiff under said name, are usually and generally known and designated.

IX.

That notwithstanding the prior appropriation and use of said distinguishing brand or name by this plaintiff, the defendant on or about June 1, 1914, and at all times since said date, has misappropriated to its own use and benefit, and for the purpose of deceiving the public and of defrauding this plaintiff of the legitimate trade of the latter, has marketed and offered for sale in this City of Manila and elsewhere packages of cigarettes, under the name and style of "Isabelas" and upon which said packages, in addition to the lawful statement of the contents thereof are manufactured from the tobacco of La Isabela Province, the said defendant has caused to appear, in prominent characters, the name "Isabelas" as the distinguishing brand or name thereof.

8

X.

That heretofore, to-wit: on or about the first day of June, 1914, the defendant company, wrongfully and unlawfully misappropriated to its own use and benefit, the word "Isabelas," in its secondary meaning and as a distinguishing brand or name for its tobacco products, and on said date and at all times since has been, and now is, engaged in manufacturing, packing, marketing and offering for sale, in the City of Manila, and elsewhere in the Philippine Islands, packages of cigarettes under the name and style of "Isabelas" and upon which said packages, in addition to the lawful statement that the contents thereof are manufactured from the tobacco of La Isabela Province, the said defendant has caused to appear, in prominent characters, the name "Isabelas" as the distinguishing brand or name thereof.

XI.

That the said unlawful and wrongful use of the said name "Isabelas" as the distinguishing brand or name of the products of the defendant is calculated to deceive the public into the belief that the goods of the defendant so designated and branded are the goods manufactured or dealt in by this plaintiff, and the use thereof by said defendant will cause the said plaintiff a continuous, irreparable and immeasurable injury.

Wherefore, the plaintiff prays:

1. That a preliminary injunction may issue out of this Honorable Court, enjoining and restraining the above named defendant, its officers, agents, attorneys, employees, or other representatives, pending the further order of this Court, from employing or making use of the word "Isabelas" or of any equivalent thereof, or of any other word or name confusingly similar thereto as a distinguishing brand or name for cigarettes or other manufactures of to-

9 bacco, marketed or offered for sale by said defendant.

2. That after the hearing of the above entitled cause, the said injunction be made permanent and final.

3. That defendant be compelled to account unto the plaintiff for any and all cigarettes heretofore marketed and sold under the name and style of "Isabelas" and for the profits realized from the sale thereof, and that said defendant be ordered to pay unto plaintiff an amount equivalent to double the amount of said profits.

4. That defendant be condemned to pay the cost of suit.

Manila, P. I., July 28, 1914.

(S'g'd) HAUSSERMANN, COHN & FISHER,
(pp. S'g'd) CHARLES C. COHN,
Attorneys for Plaintiff.

UNITED STATES OF AMERICA,
Philippine Islands,
City of Manila, ss:

Antonio Malvehy, being first duly sworn, deposes and says that he is the Secretary of the Compañia General de Tabacos de Filipinas; that he has read the foregoing complaint and knows the contents thereof; that the same is true according to his own knowledge and belief save and except as to those matters that are therein stated upon information and belief and as to those matters that he believes it to be true.

(S'g'd) A. MALVEHY.

Subscribed and sworn to before me this 30th day of July, 1914. Deponent exhibited to me cedula certificate No. C 68, issued at Manila January 5th, 1914.

((S'g'd) JOHN W. HAUSSERMANN,
Notary Public.

My commission expires December 31st, 1914.

10 That afterwards on the third day of August, 1914, the defendant filed its answer to plaintiff's said complaint, a copy of which is as follows:

Answer.

Comes now the defendant and answering the complaint herein:
1. Admits the allegations contained in paragraphs 1 and 2 of the first cause of action of the plaintiff.
2. Denies the allegations contained in paragraphs 3, 4, 5, 6, 7, 8, 9 and 10 of the first cause of action of the complaint.
Answering the second cause of action defendant alleges:
1. Admits the allegations contained in paragraphs 1 and 2 of the second cause of action of the complaint.
2. Denies the allegations contained in paragraphs 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the second cause of the complaint.

Manila, P. I., August 3rd, 1914.

(S'g'd) ROHDE & WRIGHT,
Attorneys for Defendant.

That on the third day of August, 1914, the cause being then at issue, the evidence was fully heard and received by the Court, upon the following evidence, oral and documentary, to-wit:

11 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Manila, 4th Branch.

Civil Case, No. 12079.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff,

vs.

ALHAMBRA CIGAR & CIGARETTE MANUFACTURING COMPANY, Defendant.

Proceedings.

This case came before the court for trial, Honorable James A. Ostrand, Judge, presiding, this third day of August, A. D. Nineteen hundred and fourteen, in the afternoon.

Appearances:

For the Plaintiff: Mr. C. C. Cohn.
For the Defendant: Mr. W. J. Rohde.
Mr. S. A. Dewing, Reporter

12 *Proof for Plaintiff.*

Mr. SANCHO, a witness called by the plaintiff, being first duly sworn in open court, testified as follows:

Direct examination by Mr. Cohn:

Q. Please state your name, residence, and occupation.
A. M. Sancho, No. 65 Calle Juan Luna, Manila, attorney-in-fact for Narcisso Alegre.
Q. How many years have you lived in the Philippine Islands?
A. Fifteen years.
Q. Are you familiar with the various brands of cigars and cigarettes in the Philippines market and with the manufacturers of those brands?
A. Yes, sir.
Q. Does the word Isabela used in connection with cigars and cigarettes in the Philippines have any signification or indicate in any way the origin or place of manufacture of the cigars or cigarettes to which it is applied? ?

Mr. Rohde: Objected to on the ground that the meanings of words are to be found in authoritative works on language.
The Court: Objection overruled.
Exception.

A. Yes, sir, if anyone asks for Isabela cigarettes it is understood that they are referring to Tabacalera.

Q. For what reason does the word Isabela as applied to cigars and cigarettes indicate the Tabacalera factory as the manufacturers of such cigars or cigarettes?

13 A. Because the word Isabela is marked on the packages.

Q. Do the reasons for this special significance of the word Isabela apply to the public in general or are they reasons which apply to you personally?

A. I have made a good many orders upon the Tabacalera to send cigarettes to the provinces of the kind they call "Cortos" and I have always said to send "Cortos Cigarillos Isabela."

Q. The question is this: Does the word Isabela applied to cigars and cigarettes indicate to you personally that such cigars and cigarettes are from the Tabacalera factory or does the use of this word Isabela have that signification to the general public when so used?

Mr. Rohde: Objected to as calling for a conclusion of the witness purely and simply. I believe that the witness should state his facts, if the conclusion which he draws is correct then he should be able to state the facts upon which such conclusion rests.

The Court:: Objection overruled.

Exception.

A. The general knowledge of the public.

That is all.

Cross-examination by Mr. Rhode:

Q. Where are you in business, Mr. Sancho?

A. Here in Manila; the house I represent is located in the Province of Sorsogon.

Q. And you order cigars and cigarettes from the Tabacalera factory, do you?

14 A. Yes, sir.

Q. And when you order from the Tabacalera you order principally Isabelas, do you?

A. Yes, sir.

Q. Do you also now and then ask them for other cigarettes?

A. Yes, sir, many times.

Q. What other kinds do you ask for from them?

A. Reinas de Filipinas.

Q. What others?

A. Cigars of various classes.

Q. What are the brands of cigarettes you order from them?

A. In the cigarettes only Reinas de Filipinas, Cortos Isabelas, and Lucero, these are the only three cigarettes that I order.

Q. And you say that on the packages are the words Isabela?

A. Yes, sir.

Q. On which packages does that appear?

A. On the "Cortos Isabela."

Q. And on the Reinas Filipinas it does not appear?

A. I do not remember at this moment, I don't believe it appears on the package.

Q. That is, the words "Tabacos de Fabrica, Flor de Isabela" do not appear on the packages of the Reines de Filipinas?

A. Yes, sir, that appears also.

Q. Then, Mr. Sancho, what words appear on the packages of the Cortos Isabela that do not appear on the packages of the Reinas Filipinas?

A. At this moment I could not state, that is a matter that no attention is paid to in making the orders.

15 Q. Then you don't know whether the word "Isabela" appears on the packages of the Reinas Filipinas or not?

A. No, at this moment I do not know, I order them in this form, "Cortos Isabela," "Reinas Filipinas," and "Lucero;" those are the only three kinds I order from the Tabacalera.

Q. Have you considerable general knowledge relative to the tobacco business in the Philippine Islands?

A. Yes, sir.

Q. What are the principal classes of tobacco, Mr. Sancho, leaf tobacco?

A. I have never dealt in leaf tobacco.

Q. Do you know whether Isabela tobacco is good or bad?

Mr. Cohn: Objected to as immaterial and irrelevant.

The Court: It is cross-examination; objection overruled.

Exception.

A. I do not know, but I understand that the Isabela tobacco is about the best in the Philippine Islands.

Q. Do you know the Barili tobacco?

A. No, sir.

Q. In Pangasinan?

A. No, sir, I don't know anything about leaf tobacco, I only know about manufactured tobacco.

That is all.

Witness excused.

Mr. Hess, a witness called by the plaintiff, being first duly sworn in open court, testified as follows:

16 Direct examination by Mr. Cohn:

Q. Please state your name, occupation, and residence.

A. Carl Hess, broker, No. 1155 Singalong, Manila.

Q. How many years have you spent in the Philippine Islands, Mr. Hess?

A. Fourteen, about fourteen.

Q. Are you familiar with the grades and brands of manufactured tobacco in the Philippine Islands?

A. Somewhat.

Q. And their reputation and the public esteem in which these various brands are held and the extent to which they are known?

A. I know them personally, yes.

Q. Does the word "Isabela" as applied to cigars and cigarettes have any special significance in the Philippine Islands as to the origin or place of manufacture of such cigarettes?

Mr. Rohde: Objected to on the same grounds as previously.
The Court: Objection overruled.
Exception.

A. Well, I can not speak generally, personally I have noted that the words "Flor de Isabela" is noted on one particular brand of cigars and cigarettes around here.

Q. The question is otherwise. Whether the word "Isabela" by itself indicates in any way the origin or the place of manufacture of the cigars and cigarettes to which it is applied?

A. It is a rather difficult question for me to answer in the
17 way you put it, Mr. Cohn, for the reason that I know something about the cigar and cigarette business, I was interested in it here at one time, and I can not get away from the fact that I have always noted that the cigars and cigarettes with the words "Flor de Isabela" noted on it means it is made by the Tabacalera factory.

Q. Let me put the question in another form. Suppose somebody gave you a cigar or cigarette without any wrapper or band or other means of identification on it and told you that it was an Isabela cigar or cigarette, would you have any impression from that statement as to what factory it came from?

A. If you ask that question in that way, no, I would not have, I can answer that question because I happen to know something about the cigar business, as I stated before I was in the cigar business here for a while. If you ask that question that way—if you speak of "Flor de Isabela" I know that you mean the Tabacalera.

Q. Is the expression "La Flor de Isabela" ever ab-reviated by the general public?

A. Well, I think it is, yes.

Q. In what way is it abbreviated?

A. That they generally refer to Isabela cigars or cigarettes when they talk about cigars or cigarettes of the Tabacalera factory.

Q. That is the people generally refer to the cigars and cigarettes of the Tabacalera factory as Isabela cigars or Isabela cigarettes?

A. The people I deal with ordinarily, no, I have references
18 made to me that way referring to Tabacalera goods.

Q. Are those references frequent?

A. Not now, no.

Q. When such references were made to you, were they frequently made?

A. Comparatively frequent, yes.

Q. And did such references come from many different sources?

A. From buyers of cigars.

Q. Now who are the persons that you refer to that you say didn't make use of this ab-reviation in referring to the products of the Tabacalera Factory?

A. The people who were buying cigars at wholesale didn't use this ab-reviation.

Q. Persons with whom you dealt in cigars and cigarettes didn't make use of this ab-reviation?

A. They didn't make use of this ab-reviation, no, the buyers of cigars at wholesale, people in the cigar business.

Q. Did the general consuming public generally ab-reviate the term "La Flor de Isabela" and use simply the word "Isabela?"

Mr. Rohde: Objected to as leading.

Q. Who were the persons, Mr. Hess, who did make use of this abbreviation in referring to the Tabacalera factory and its products?

A. Generally the cigar makers around here used to refer to the Tabacalera Factory as the Isabela Factory; I was running a little cigar factory at the time and I remember that the cigar makers used to speak about the Isabela Factory. That is years ago now that I am speaking of, that is ten years ago, about ten years ago now.

19

That is all.

Cross-examination by Mr. Rohde:

Q. You have been here you say for about fourteen years, Mr. Hess, and were interested in the cigar business here about ten years ago. Now do you remember about ten years ago some long cigars that were sold around here that were made up in Isabela Province?

A. Yes, I remember those long cigars, they are generally made up in Cagayan.

Q. And how are they known?

A. As Cagayan cigars.

Q. Don't you also know the word "Isabela" used in connection with these long cigars?

A. I only state personally, they make some of those in Isabela too I think, but I remember particularly the Cagayan, I wouldn't want to state about the Isabelas.

Q. The Cagayan cigars come from the province of Cagayan, you say; the Isabela cigars would be better than the Cagayan, wouldn't they?

A. To a man that knows something about cigars they probably would, yes.

Q. Because Isabela is the province that produces the best tobacco?

A. It is known as the best tobacco, yes; the best wrapper tobacco; best looking tobacco.

Q. Do you know the various class- of Tobacco in the Philippines, Mr. Hess?

A. Most of them I guess, Isabela, Cagayan, Union, and Barili, those are the only ones I used.

20

Q. Isabela is a class of tobacco?

A. Yes, sir.

Q. Have you ever exported any tobacco, Mr. Hess?

A. Not in leaf form, as manufactured tobacco, yes.

Q. Have you any knowledge of the exportations made by other persons of leaf tobacco, that is, the manner in which they do it?

A. By hearsay only, not by actual knowledge.
Q. You don't know what words they put upon the bales to indicate the tobacco? What marks or indications are put on the packages?
A. I could not tell you from actual positive knowledge, no.

That is all.

Witness excused.

Mr. ELSER, a witness called by the plaintiff, being first duly sworn in open court, testified as follows:

Direct examination by Mr. Cohn:

Q. Please state your name, occupation, and residence.
A. E. E. Elser, Insurance Agent, No. 437 Calle Looban, Manila.
Q. How long have you been in the Philippine Islands, Mr. Elser?
A. Between twelve and thirteen years.
Q. Have you ever been in the tobacco business during any part of that time?
A. Why, I was interested somewhat some eleven or twelve years ago, yes.
Q. About eleven years ago?
21 A. Yes, sir.
Q. During the past eleven years that has not been your business?
A. No, no.
Q. Do you know generally the public nomenclature of the cigars and cigarettes and the factories thereof in the Philippine Islands?
A. In a general way, yes.
Q. Do you know the factory called La Flor de Isabela?
A. I do.
Q. Do you know whose factory that is, so called?
A. The Tabacalera.
Q. Is that name, La Flor de Isabela, ever ab-reviated?
A. That I could not say, Mr. Cohn.
Q. Have you ever heard the factory La Flor de Isabela referred to by any other name?
A. Except as Isabela and Tabacalera.
Q. You have heard the Tabacalera factory La Flor de Isabela called Isabela?
A. Yes, sir.
Q. Frequently?
A. I wouldn't say as to that; I should say yes, rather frequently.
Q. Does the name Isabela as applied to cigars and cigarettes indicate in any way the origin or place of manufacture of the cigars and cigarettes to which it is applied?
A. I do not know just how to answer that. To answer stating it in my own way and to my own meaning, the word Isabela when used in connection with cigars or cigarettes is always associated with the Tabacalera factory.
22 If you were given a cigar or cigarette without any wrapper or band or other identifying mark and told that it was an

Isabela cigar or cigarette, would that indicate to you the factory from which it came?

A. I would think that it came from the Tabacalera factory.

Q. For what reason would that statement indicate to you that it came from the Tabacalera Factory?

A. Well, in the first place, I have passed by the factory, the La Flor de Isabela, every day for years on my way to an- from home; I have seen it on boxes and packages for a long time, and as I stated the two are very closely associated together in my mind, knowing that the La Flor de Isabela factory is the factory of the Tabacalera Company.

Q. Are those reasons which indicate to you the factory or place of manufacture of cigars called Isabela peculiar to yourself, or are the general to the public?

A. I could hardly answer that, Mr. Cohn, only personally, as I say the word Isabela when associated with cigars always indicates to me they are from the Tabacalera Company.

Q. Well, the reasons which make you associate the two, are they reasons which effect you alone or are they also reasons which effect the public generally?

Mr. Rohde: Objected to as that is a matter which is purely psychological; the question calls for something which the witness can not know.

The Court: Objection sustained.

Q. In dealing with the members of the general public, Mr. Elser, would you refer to the products of the Tabacalera cigar and cigarette factory as Isabela cigars and as Isabela cigarettes with the
23 expectation of being understood?

Mr. Rohde: Objected to for the reasons just stated.

The Court: Objection overruled.

Exception.

A. I think I would.

Q. What would you expect your hearer to understand your meaning to be when you referred to Isabela cigarettes and Isabela cigars?

A. I should take it he would think I wanted the product of the Tabacalera Factory.

That is all.

Cross-examination by Mr. Rohde:

Q. You don't seem to know that the word Isabela has a grade meaning, that is as to the quality of the tobacco, do you?

A. No, no more than that I know that Isabela tobacco is supposed to be good tobacco, and I have always supposed that the Tabacalera Company controlled the output of Isabela tobacco.

Q. You always thought that the Tabacalera Company controlled the output of tobacco from the Province of Isabela?

A. Yes, I don't know why I should but that has been my impression anyhow.

Q. "And Isabela cigar," would that not convey to you the meaning of a cigar made of Isabela tobacco?

A. Well, perhaps so, still, as I have stated, I have always associated the Tabacalera and Isabela as one.

24 Q. Isn't it a fact that "Isabela cigar" has nearly the same signification as "Cuban cigar," or rather "Havana cigar?"

A. I couldn't answer that, I don't know; when you say a Philippine cigar that of course would be just like saying a Cuban cigar.

Q. How long were you in the tobacco business, Mr. Elser, here in the Philippine Islands?

A. I was interested in the tobacco business perhaps for two years or so.

Q. What was the nature of your tobacco business?

A. I was with E. C. McCullough & Co. at the time, who, in 1902, 1903, and perhaps 1904 were heavily interested in the Maria Cristina Factory.

Q. Did you export cigars?

A. No, sir.

Q. Did you export tobacco?

A. I did not.

Q. Did you sell the product of that factory here?

A. I did not.

Q. What was your connection with the cigar business, then?

A. We were simply generally interested in this factory, the Maria Cristina Factory, and had more or less to do with it in a financial sense.

Q. You did not conduct the business at all then?

A. No, except as I stated.

Q. You were simply interested in the tobacco business, that is McCullough & Co. was, in a financial way, and the office end of it?

A. Yes, sir.

25 Q. And otherwise you are simply interested in cigars and cigarettes the same as Mr. Cohn and myself, in the consumption of the weed?

A. Yes, sir.

Q. And what kind of a weed do you ask for, Mr. Elser?

A. Insular.

Q. Then you must, as you do, confess that you don't know much about it?

A. No, I wouldn't say that; I think I know quite a little about it.

That is all.

Witness excused.

Mr. GACHES, a witness called by the plaintiff, being first duly sworn in open court, testified as follows:

Direct examination by Mr. Cohn:

Q. Please state your name, occupation and residence.

A. Samuel F. Gaches, merchant, Elks Club, Manila.

Q. With what mercantile establishment in the City of Manila are you connected, Mr. Gaches?

A. With the H. E. Heacock & Co.

Q. How long have you been connected with that company?

A. About four years.

Q. Prior to your connection with that firm what was your occupation?

A. I was in the Government service.

Q. What particular branch of the Government service were you in?

A. The Internal Revenue Bureau.

26 Q. How long were you employed in the Internal Revenue Bureau, Mr. Gaches?

A. Five years.

Q. How many years in all have you been in the Philippine Islands?

A. Fourteen years.

Q. Do you know the makes and brands of cigars and cigarettes in the Philippine Islands and the names of the concerns that manufacture them?

A. Well, I did some time ago, the old established ones I think I do know, yes.

Q. And you know the names of the more prominent ones at the present time?

A. I think so.

Q. Do you know the name of the factory conducted by the Compañia General de Tabacos de Filipinas?

A. I do.

Q. What is it?

A. La Flor de la Isabela.

Q. Is that name in general popular use in the Philippine Islands in speaking of that factory and its products?

A. Yes, it is more often ab-reviated to La Isabela.

Q. Does the name Isabela as applied to cigars and cigarettes indicate in a general way the origin and place of manufacture of the cigars and cigarettes referred to?

A. It does, especially as regards cigarettes; as regards cigars also but more especially cigarettes.

Q. What does it indicate?

A. That they are cigarettes manufactured by the Tabacalera Co.

27 Q. Would you say that that is an indication which is peculiar to yourself alone or that it is an indication which is conveyed to the public generally?

A. I think it is the generally accepted idea, that the Isabela is manufactured by the Tabacalera Co.

Q. If you referred to cigars and cigarettes as Isabela cigars or Isabela cigarettes would you expect to be understood by the person in this community to whom you addressed your statement as referring to the product of the Compañia General de Tabacos?

A. With regard to cigarettes I would expect them to believe that it was Tabacalera cigarettes.

That is all.

Cross-examination by Mr. Rohde:

Q. With respect to cigars what would you consider?

A. Well, with respect to cigars it would depend entirely on whether the person was a resident here of some time and had had experience in tobacco or whether he was a new man; anybody speaking of cigars, speaking of Isabela cigars, to one who had been in the Islands any considerable length of time would expect to be understood as referring to La Flor de la Isabela cigars, to new people it might appear that it was an Isabela cigar, that is Isabela leaf.

Q. Why should that difference be, in your opinion?

A. Nothing more than that there is a province known as Isabela and it is known as a tobacco growing province.

Q. A new-comer would learn that Isabela cigars were cigars made of Isabela tobacco when he first came and then afterwards he
28 would learn that they were cigars made by the Tabacalera Company, is that the idea?

A. The first thing he would think of would probably be the province, but afterwards he would learn of the factory which has control of the output of tobacco from that province and he would naturally associate the cigar with the products of the La Flor de la Isabela factory, which is supposed to control the most of the tobacco from Isabela.

Q. You say that the Tabacalera Company controls the greater part of the output of tobacco from Isabela province?

A. I say it is supposed to, I know that I have always had the impression that it controlled the greater part of the tobacco from that part of the Islands, and I know that the Tabacalera is intimately associated with the control of all the tobacco from that section, Cagayan and Isabela.

Q. And especially the output of the province of Isabela?

A. Yes, especially Isabela.

Q. And is it because of that fact that there product is sometimes referred to as Isabela cigars and Isabela cigarettes?

A. In regard to cigars, yes.

Q. And cigarettes?

A. Cigarettes they have a regular name for, I could not give you all the names now.

Q. You haven't answered my question, Mr. Gaches?

A. As I understand that was an answer to your question.

Q. Why should their output of cigars be referred to at all times as Isabela cigars because of the fact that this product is made of the product of Isabela Province and the cigarettes not, do you mean to
29 intimate that they put tobacco in their cigarettes that does not come from the Province of Isabela?

A. No, of that I know nothing, but the name Isabela is

closely associated in my mind with the Tabacalera factory, if I speak to someone, for instance I tell my boy to go out and get me a package of La Isabela cigarettes and he knows only one thing and that is to get cigarettes of the Tabacalera Company.

Q. How many brands of cigarettes of the Tabacalera Co. do you know?

A. I wouldn't want to say, it has been too many years since I have had anything to do with the tobacco business.

Q. Do you know a single brand?

A. Only Isabela or La Isabela, I speak of the cigars and cigarettes of the Tabacalera Company as Isabela.

Q. Do you know that they themselves or their customers, dealers with them, refer to certain of their products as Isabela and to others not?

A. That I could not say. I think the ordinary dealer in Manila if asked for an Isabela cigarette would immediately give a cigarette manufactured by the Tabacalera Company, the same as if you asked for an Insular cigarette or an Alhambra cigarette; the name is as distinct as could be.

That is all.

Witness excused.

Mr. FIGUERRAS, a witness called by the plaintiff, being first duly sworn in open court, testified as follows:

Direct examination by Mr. Cohn:

30 Q. Please state your name, occupation, and residence.

A. T. D. Figuerras, merchant, Iloilo.

Q. How many years have you lived in the Philippine Islands, Mr. Figuerras?

A. Twenty-seven years now.

Q. Are you familiar with the names and brands of cigar and cigarette factories in the Philippine Islands and their products?

A. I know some of them.

Q. Do you know the names by which cigars and cigarettes and the factories which make them are recognized by the general public in the Philippine Islands?

A. Yes, sir.

Q. What is the name of the factor- of the Campañia General de Tabacos de Filipinas??

A. La Flor de la Isabela.

Q. Is that name ever ab-reviated?

A. Many times.

Q. What ab-reviation is used?

A. La Isabela.

Q. Does the word Isabela applied to cigars and cigarettes have any special signification in the Philippine Islands indicating the origin of the cigars and cigarettes to which it is applied?

A. No, sir, I would think that they came from La Flor de Isabela.

Q. Why would you understand that cigars and cigarettes referred to as Isabela cigars and Isabela cigarettes came from the La Flor de la Isabela factory?

31 A. Using the word Isabela in connection with cigars and cigarettes I would understand and the public understands that they are made or manufactured by the La Flor de la Isabela factory, and furthermore I do not know of any factory manufacturing cigars or cigarettes in the Province of Isabela.

Q. In the Philippine Islands, Mr. Figuerras, speaking now of public usage and custom, is it customary to distinguish between cigars and cigarettes according to the tobacco which is in them or according to the factory where they are made?

A. Of the different factories, when I ask for an Isabela cigarette I do not care whether the tobacco used in that cigarette comes from Isabela, Cagayan, or Barili, I simply ask for a cigarette manufactured by the La Flor de Isabela Company.

Q. Is that a peculiarity of your own, Mr. Figuerras, or is that general with the public at large?

A. That is my personal opinion and I believe it is the general opinion also.

That is all.

Cross-examination by Mr. Rohde:

Q. Do you smoke, Mr. Figuerras?

A. Yes, sir.

Q. What cigarettes do you smoke?

A. I smoke Tabacalera, Insular, I smoke different kinds, when I get tired I change.

Q. You smoke Tabacalera cigarettes, do you?

A. Yes, sir.

Q. Do you ever smoke Isabela cigarettes?

32 A. I smoke Tabacalera or Flor de Isabela.

Q. You smoke Tabacalera or Flor de Isabela or Insular or Alhambra?

A. Yes, when I am tired of one kind I change.

Q. How many brands of cigarettes does the Tabacalera make?

A. Several.

Q. How many?

A. I do not know?

Q. Do you know of any brands they make?

A. Yes, sir, I often smoke Rositas.

Q. Do you smoke Reinas de Filipinas?

A. Yes, sir.

Q. There is a difference in the price, is there not?

A. Yes, sir.

Q. There is a difference in the price of the cigarettes of the Germinal Factory, is there not?

A. Germinal I do not know, because I never smoke them.

Q. Give us, in Spanish, all the ab-reviation of "La Flor de la Isabela" that are current here.

A. I believe there is one which is "La Isabela."

That is all.

Witness excused.

The Court: The case will be continued until August 4, 1914, ten o'clock.

Continuation August 4, 1914, a. m.

Mr. MALVEHY, a witness called by the plaintiff, being first du sworn in open court, testified as follows:

Direct examination by Mr. Cohn:

33 Q. Please state your name, occupation, and residence.
A. Antonio Malvehy, Secretary of the Compañia Gene de Tabacos de Filipinas.
Q. During what time have you been connected with the Co pañia General de Tabacos de Filipinas?
A. Twenty-four years.
Q. How long has that company been established in the Philippi Islands?
A. Since the year 1882.
Q. And what is the business of the Compañia General de Taba de Filipinas?
A. To buy and export tobacco, they also have a cigar and cig ette factory here, and also the buying and exporting of copra a hemp and all the other products of the country.
Q. Have those been the commercial purposes and objects of t company since its inception?
A. Yes, sir, and they always have estates of sugar and tobacco a palay.
Q. Where are the tobacco products, the cigars and cigarettes a other tobacco products of the company sold?
A. In all parts of the world.
Q. Is there an extensive market for their products in the Phili pine Islands?
A. Yes, sir, in all the provinces.
Q. In the United States is there such a market also?
A. Yes, also.
Q. In the various countries of Europe is there such market?
34 A. Also.
Q. Has the cigar and cigarette factory of the Company special name?
A. Yes, sir.
Q. What is it?
A. La Flor de la Isabela.
Q. How long has it had that name?
A. Since the establishment, over twenty-seven years ago.
Q. How is that name used by the Company?

A. It is used in all that refers to the factory as well as its products, it is on the letter heads, invoices, packages, etc.

Q. Is the factory generally known by that name?

A. Yes, sir.

Q. Everywhere or only in places?

A. Everywhere, where cigars and cigarettes are sold.

Q. Do you know if that name has ever been registered by the Company?

A. Yes, sir, we have a title from the Spanish Government.

Q. I hand you this document marked Exhibit "A" and ask you to state what that is?

A. This document is the title allowed by the Governor-General of the Philippine Islands on the 5th of April, 1887, allowing the Company the title of property of the name La Flor de la Isabela.

Q. Has this title of property Exhibit "A" been annulled or cancelled by the Government at any time?

A. Never.

35 Mr. Cohn: I offer in evidence the document Exhibit "A."

Mr. Rohde: No objection.

Mr. Cohn: I ask permission to be allowed to withdraw the original document and substitute a copy duly certified.

Mr. Rohde: No objection.

Q. What is the primary signification of the words La Isabela?

A. The factory used that name because the- used in the manufacture of their cigars and cigarettes tobacco leaf from our haciendas in La Isabela Province.

Q. Apart from the factory what does the term La Isabela indicate?

A. It is a province of the Philippine Islands.

Q. The name of the factory, La Flor de la Isabela, is it always used in its complete form or is it sometimes ab-reviated?

A. It is used sometimes in an ab-reviated form and sometimes there is used only "La Isabela" referring to the factory "Isabella" or "Isabelas" when referring to the products of the factory.

Q. In public usage is the complete form, La Flor de la Isabela, or some form of ab-reviation more generally used.

A. The two forms are frequent but here in the Philippine Islands as well as in America they are accustomed to use Isabela, Isabella, or Isabelas.

Q. What is the usage in the United States of America with regard to your factory and its products?

A. In America there is frequently used Isabela.

36 Q. Have you any correspondence with the market in America showing that usage?

A. Yes, sir, I have here certified copies from our correspondents in San Francisco, by whom *are* factory is known as Isabela and the others are known as Yebana, Alhambra, etc., and furthermore for instance *are* cigars are called Isabela Perfectos, the same as they call Yebana Perfectos, Insular Perfectos, etc., and furthermore I have here a letter from our correspondent in San Francisco where they

ask us that instead of the name La Flor de la Isabela we put only the name Isabela." Furthermore, the trade here knows the cigars as "Isabela" pure and simple." They wanted it changed on account of it being a long name.

Q. Where are the originals of the four letters you produced here in court?

A. They are in the office, I could bring them if desired.

Q. Have you any sample of the announcements made by the dealers and consumers of your tobacco products in the United States? Showing the name by which your goods are known to the trade?

A. Yes, sir, I have one here (Exhibit "F") where you can see them announced as "Isabella."

Mr. Cohn: I offer in evidence the documents marked Exhibits "B" to "F," inclusive.

Mr. Rohde: No objection.

Q. During the twenty-seven years of the existence of the factory of your Company has any other tobacco factory made use of the name of your factory of any of its products?

A. Of the name, no sir, but now recently we have been
37 having some discussions with some parties who exported cigars to the United States under the name of Isabela but we succeeded in obtaining a prohibition against their using that name in San Francisco, and we came to an agreement in regard to it.

Q. Aside from this use which was prohibited and adjusted has anybody else made use of this name of yours or its ab-reviations?

A. I do not remember, except La Rosa Filipina, who used the word Flor de Isabela, which we also succeeded in putting a stop to, and the case which is now under discussion, and aside from these cases I do not now remember of any others.

Q. Does the factory of the plaintiff manufacture any product which is given the brand name of Isabela or Isabelas?

A. Yes, sir, we have the Cortos, known as Isabela Cortos, which appear in our tariff by that name, and furthermore, in all the orders we receive they are known by that name, Isabela.

Q. I hand you these documents marked Exhibits "H" to "M," inclusive, and ask you to state what they are.

A. Exhibit "H" is an order from the Benguet Commercial Co. for Isabela Cortos cigarettes, and all of these others are also orders for Isabela Cortos cigarettes, one of the brands of cigarettes manufactured by our company.

Q. These documents Exhibits "H" to "M," inclusive, contain all of such orders received by you or are they only samples?

A. Only samples.

Q. I hand you this document Exhibit "N" and ask you to state what it is.

A. This is a copy of the tariff we put out giving the prices
38 of cigars and cigarettes and here are the names of the brands of cigars and cigarettes manufactured by the company, cigarettes, Isabela Cortos, Isabela Largos, Isabela Entrelargos, etc.

Q. When was this list issued?

A. This is a reprint of a copy of our tariff which has been in use for some time, the prices given here have been in force for some four or five years, but the tariff is a copy of an old one we have used for some time.

Q. How long has your factory been manufacturing cigarettes under the name of Isabela?

A. I do not remember exactly at this moment but it is more than ten years.

Q. How does the antiquity of these brands, Isabela Cortos, Isabela Largos, and Isabela Entrelargos compare with the antiquity of the other marks of cigarettes manufactured by your company?

A. This is the oldes- brand of all, this is the first cigarette manufactured by the company.

Q. Has the Company been manufacturing them continuously since they commenced operation?

A. Yes, sir.

Q. And have they always been known by that name of Isabela Cortos?

A. Yes, sir.

Q. Have they ever had any other name?

A. Never.

Q. Has that name been published in the price list continuously?

A. Yes, sir.

39 Q. I hand you this document marked Exhibit "O" and ask you what that is.

A. This is a wrapper or package for cigarettes known as Isabela.

Q. By whom is that package used?

A. By the Compañia General de Tabacos de Filipinas, La Flor de la Isabela Factory.

Q. How long has that been in use?

A. I do not remember how long at this moment, but I should say five or six years at least.

Q. What is this object marked Exhibit "P" for identification?

A. This is the package usually used for packing the small packages of these cigarettes named Isabela Cortos.

Q. Is that the form of package that the Company invariably uses for this class of cigarettes?

A. This style of package has been used for a matter of six or seven years.

Q. Has the Company ever granted a license to any other person or persons to make use of the name Isabela or Isabela Cortos for cigarettes?

A. No, sir, to nobody.

That is all.

Cross-examination by Mr. Rohde:

Q. What is Exhibit "O"?

A. This is a wrapper for cigarettes.

Q. Do you manufacture them now?

A. Yes, sir.
Q. How long have you manufactured this brand of cigarettes?
A. I do not remember the exact date but it is about five or six years now.
40 Q. Are they now in the market?
A. Yes, sir.
Q. In Manila?
A. I do not know whether in Manila or whether they are only put up for export, I can not answer that with certainty, but undoubtedly there are some in stock now.
Q. Do you know any place where they are sold?
A. In America and other places.
Q. Is this mark registered?
A. The name, yes, sir.
Q. Why do you say that the name is registered?
A. There is registeerd in Manila the name La Flor de la Isabela and in America Isabela.
Q. You had it registered in America?
A. Yes, sir.
Q. The word Isabela?
A. Yes, sir.
Q. The word Isabela?
A. Yes, sir.
Q. Do you know whether it was made known to the office in the United States where it was registered that Isabela was the name of a province in the Philippine Islands?
A. I believe they know enough geography to know that.
Q. Don't you think it is pretty difficult for a man in the United States to know the names of the provinces of the Philippine Islands?
A. I do not know.
Q. You say that the names Isabela, Isabella and Isabelas are used as ab-reviated forms of the names of the output of the
41 factory?
A. Yes, sir.
Q. You have adduced here letters that I believe are all of this year, 1914, have you any correspondence of an earlier date wherein any ab-reviation of that kind occurs?
A. Yes, sir.
Q. What is the earliest date, or the letter with the earliest date that you could exhibit wherein they ask for Isabela Cortos?
A. Of eight or ten years ago I can bring orders.
Q. In which they ask for Isabela Cortos?
A. Yes, sir.
Q. What does this Cortos mean?
A. There are three sizes of this cigarette, Cortos, entrelargos, and Largos (short, medium, and long).
Q. Do you make those of Isabela tobacco?
A. It is a mixture of several kinds of tobacco.
Q. They are not made of Isabela tobacco, these Isabela Cortos?
A. Not entirely Isabela tobacco.
Q. Do you use Cagayan tobacco in these cigarettes?

A. Cagayan and of several other places, we make a mixture.

Q. What are the principal tobacco factories in Manila, Mr. Malvehy, say the four or five principal onces?

A. We will start with ours, the Isabela, Insular, Germinal, Oriente.

Q. Why didn't you finish the name when you started to give the name of your factory you said "Ta" and then stopped.

A. It is the same thing, our cigarettes and cigars are known as Isabela, it is the same.

Q. Isn't it a fact that your factory is known almost exclu-
42 sively as Tabacalera?

A. Not the factory, the company, yes, there is a difference, the company is known here as Tabacalera, or Compañia General de Tabacos de Filipinas, which company is not devoted solely to the making of cigars and cigarettes but is conducting the business of a general merchant, that company is generally known as Tabacalera, but regarding the factory La Flor de la Isabela, that is generally known as La Isabela; if you ask the workmen in any other factory here in regard to our factory he will tell you La Isabela or Isabela.

Q. Do you know Olsen's tobacco stand?

A. Yes, sir, I know where it is but I have not been there.

Q. Do you know Mr. F. W. Prising?

A. By sight I think.

Q. Would you consider it strange if Mr. Prising yesterday after we left the court room did not know of Isabela cigarettes of the Tabacalera company?

Mr. Cohn: Objected to as improper cross examination.
The Court: Objection overruled.
Exception.

A. I do not know how to answer that question because I have no opinion regarding it, I don't know him.

Q. If he is a man who has been selling cigars there on the corner for years and years wouldn't you think it rather strange that he shouldn't know?

A. I do not know him.

Q. Do you know Mr. McMicking, the Clerk of this Court?

A. Yes, sir.

43 Q. Now if he has smoked your cigarettes for ten years or more would you think it strange that this morning he did not know of Isabela cigarett-s of your factory?

Mr. Cohn: Objected to as improper cross examination, irrelevant, immaterial, and incompetent.
The Court: Objection overruled.
Exception.

A. I have no opinion on that matter, as I stated in reply to the former question of the same kind, because before these two I can bring fifty who would say that they do know.

Q. Do you know Mr. Blanco, an employee of this court, who states

he has smoked your cigarettes for about forty years, and he also states that he does not know of Isabela cigarettes manufactured by your factory?

A. I do not know him.

Q. What is the oldest price list, Mr. Malvehy, that you can exhibit to us?

A. I do not know if there are any old ones which I can find, but I can affirm that this one (Exhibit "N") is a copy of an old one in use by the factory for more than ten years, and it has been in use ever since the factory began to manufacture these cigarettes.

Q. Do you really believe, Mr. Malvehy, that for instance in going to three or four or five tiendas in Manila one after another and asking for Isabela cigarettes that they would understand what you wanted?

A. If you go into any store and ask for Isabela Cortos or Isabela cigarettes they would know what you wanted.

44 Q. This "Isabela Cortos" appears only on the large wrappers, does it not, and does not appear on the small package of cigarettes?

A. No, only on the small package.

Q. And this wrapper of course would hardly ever be seen by the consumer and would only be seen by the middle man?

A. Yes, sir.

Q. And this word "cortos" is to distinguish it from other cigarettes which are longer, is it not?

A. Yes.

Q. Would you ever make a cigarette and put "Isabela" on it without at least some of the tobacco being Isabela tobacco?

A. Yes, sir.

Q. Since when have you done that?

A. Always.

—. That is all.

Redirect examination by Mr. Cohn:

Q. Please state how it happens that these letters and orders offered as exhibits all bear dates in 1914?

A. Because we simply took the last ones which the file clerk had, we have them of all the dates you want.

Q. These sample orders and letters were taken from the current files of the Company?

A. We simply took them from the last orders and letters in order not to disturb the files, but we have no objection to bringing you those of any dates you desire.

Q. You stated on cross examination that as against the two or three persons mentioned by your examiner that stated they

45 had never heard of Isabela cigarettes manufactured by your company you could bring fifty who had heard of it, is fifty the limit of the number you could bring who had heard of it?

A. That is simply a random number I mentioned, but it is known by everybody.

That is all.

Cross-examination by Mr. Rohde:

Q. Have you any requisitions for cigarettes mentioning only Isabela without the term Cortos?
A. In the cigarettes I do not remember whether there is or not, but in cigars, yes.
Q. In orders from America only for cigars?
A. From America, yes, and possibly from some other places in Europe, but I do not remember at this moment.
Q. How long have you been doing business with America?
A. After the removal of the tariff, in 1904 or 1905.

That is all.

Redirect examination by Mr. Cohn:

Q. The label used on these Isabela cigarettes of your company has been in use for how long?
A. For over twenty-seven years.
Q. How does the workmanship on that label compare with the other labels of the Tabacalera Company?
A. The others are better made than this.
Q. Why is this label continued in this crude form?
A. In order to keep the same label, because it is well known and we wish to continue it.
46 Q. Is this label expressly crudely made so as to be exactly like the labels made years ago?
A. Yes, sir.

That is all.

Witness excused.

Mr. PEREZ, a witness called by the plaintiff, being first duly sworn in open court, testified as follows:

Q. Please state your name, age, occupation, and residence.
A. Faustino Perez, fifty-eight years of age, merchant, Manila.
Q. In what business are you engaged?
A. I am an agent of the Compañia General de Tabacos de Filipinas, and furthermore I have various kinds of business in the Philippines.
Q. What branch of the Tabacalera's business are you in charge of at the present time?
A. I have always been in charge of the branch of cigars and cigarettes and in charge of sales in Manila and to some extent in the provinces.
Q. Do you know this object which I have here marked Exhibit "P"?
A. Yes, sir.
Q. What is it?
A. These are Isabela cigarettes, which I have been selling for over twenty-six years.

Q. Have they been continuously on sale?
A. Yes, sir, continuously.
Q. In the same form and package?
A. Exactly.

Q. How extensive, how general, are the sales of these cigar-
47 ettes in the Philippines?

A. It varies, sometimes about one million packages, sometimes a little more or a little less.
Q. You mean per year?
A. Yes, sir.
Q. Are they still being manufactured and sold?
A. Yes, sir, they are the favorites of people who are supposed to know what good cigarettes are particularly among those who prefer a strong cigarette.
Q. Do you know what this article which I have here in my hand marked Exhibit "Q" is?
A. Yes, I have seen it sometimes.
Q. What is it?
A. Cigarettes.
Q. When did you see it for the first time?
A. I saw it for the first time eight days ago, because I have been absent.
Q. Do you know whether these packages of cigarettes such as Exhibit "A" are on sale in the Manila market?
A. I suppose so because some have asked for the Isabela cigarette at our stand and we always give them this Isabela Cortos and they said no, that they wanted Alhambra.
Q. How many times has that occurred, Mr. Perez?
A. In my presence once, but my people in the cigar stand told me that it had happened several times.

That is all.

Cross-examination by Mr. Rohde:

Q. But they were not at all deceived when they were handed cigarettes manufactured by your factory, were they?

48 Mr. Cohn: Objected to as immaterial and irrelevant.
The Court: Objection overruled.
Exception.

A. No, sir.
Q. Isn't it a fact that you, that the Tabacalera Co. has no package in any wise similar to this package of the Alhambra, Exhibit "Q"?

Mr. Cahn: I am willing to admit that the Tabacalera has no package of cigarettes which resembles the general appearance of the package Exhibit "Q".

Q. How many kinds of cigarettes does the Tabacalera Company make, Mr. Perez?
A. Twelve, fifteen, twenty, many.
A. Could you exhibit us a little package of each?

A. Yes, sir, there is no objection to that.

That is all.

Witness excused.

Mr. URMENATA, a witness called by the plaintiff, being first duly sworn in open court, testified as follows:

Direct examination by Mr. Cahn:

Q. Please state your name, occupation, and residence.
A. Damian de Urmeneta, manager of the La Flor de la Isabela factory, Manila.
Q. Please state what this Exhibit "P" is.
A. Cigarillos La Isabela Cortos.
49 Q. Are those cigarettes manufactured by your factory?
A. Yes, sir.
Q. How long have they been manufacturing those cigarettes?
A. From the existence of the factory.
Q. And are they being manufactured now?
A. Yes, sir.
Q. In about what quantities?
A. About one million cigarettes a month.
Q. And are they sold as manufactured?
A. Yes, sir.
Q. Have these cigarettes ever been known by any other name than their present name of Isabela Cortos?
A. Since coming to the Philippine Islands I have known them by that name.
Q. Have they ever had any other name?
A. No, sir, I don't think so.
Q. Are those cigarettes always included in the catalog-es of the Tabacalera Co.?
A. Yes, sir.
Q. Under what name?
A. Isabela Cortos.
Q. Under what name are these cigarettes ordered by the patrons of the company?
A. Isabela Cortos.
Q. Are they ever ordered by any other name?
A. No, not that I remember of.

Mr. Cohn: That is all. I offer in evidence Exhibits "H" to "Q", inclusive, and rest.
The Court: Continued to August 5, 1914, 2:30 p. m.

50 Continuation August 5, 1914, p. m.

Proof for Defendant.

Mr. OLSEN, a witness called by the defendant, being first duly sworn in open court, testified as follows:

Direct examination by Mr. Rohde:

Q. Please state your name, address, and occupation.
A. Walter E. Olsen, No. 27 Escolta, merchant.
Q. How long have you resided in the Philippine Islands, Mr. Olsen?
A. Going on sixteen years.
Q. What has been your business during this period?
A. The last eleven years of it I have been in the tobacco business.
Q. Do you know the principal tobacco factories in Manila?
A. I do.
Q. What are the five principal ones, the four or five most important ones?
A. Insular, Alhambra, La Flor de Isabela, Germinal.
Q. The La Flor de Isabela just mentioned by you, to what company does that belong, if you know?
A. The Compañia General de Tabacos.
Q. Has the Compañia General de Tabacos de Filipinas any other short name that is commonly used by the public?
A. Yes, it is commonly called the Tabacalera Company.
Q. How is the output of the company, the Tabacalera Company, referred to generally among the public, Mr. Olsen?
A. Well, with the public here in the Islands it is usually referred to as Tabacalera; in the States it is quite different, it is usually
51 referred to there as Isabela or La Flor de Isabela, but almost always as Isabela.
Q. Are you familiar with the quality of the tobacco produced in the various provinces of the Islands, Mr. Olsen?
A. With the quality of it?
Q. Yes.
A. I am, yes.
Q. What is the province which produces the best quality of tobacco in the Philippine Islands?
A. Isabela province.
Q. Is that fact known generally in the Philippine Islands?
A. Yes, especially among dealers.
Q. Is that fact known generally in the United States to the tobacco world, particularly to those interested in Manila goods?
A. Yes, I should say that it is.
Q. Do you know whether there are any cigarettes in the market here now known as Isabela?
A. Yes.
Q. Of what factory are they?
A. There is the Isabela Alhambra and the Isabela Cortos and Isabela Largos of the Tabacalera Company.

Q. The Isabela Cortos and Isabela Largos of the La Flor de Isabela Factory, have they other marks by which they are known besides Isabela Cortos and Isabela Largos?

A. Well, they are sometimes called Tabacalera, Tabacalera Cortos and Tabacalera Largos, that is the term by which they are usually called for in the trade, Tabacalera Cortos and Tabacalera Largos.

Q. Do you know anything about the exportation of leaf
52 tobacco from the Islands, Mr. Olsen?

A. We have made some exportations, yes, we exported some to Australia.

Q. And other places?

A. Yes.

Q. Do you know how the bales are marked, the bales of leaf tobacco put up for export?

A. They are usually marked with the classification for the province the tobacco is from with the year, that is it would be marked 1st, 2d, 3d, or 4th Isabela or 1st, sd, 3d, or 4th Cagayan, with the year.

Q. I hand you this piece of Saguran, marked for identification Exhibit "1", and ask you if you recognize the use of that article.

A. Yes, it is used as covering for leaf tobacco for shipment.

Q. And is that the usual way of marking the covering for leaf tobacco put up for exportation?

A. That is the customary way I have usually seen it marked.

Mr. Rohde: I now offer in evidence Exhibit "1".

Mr. Cohn: Objected to as immaterial and irrelevant.

The Court: It will be admitted for whatever it is worth.

Exception.

Cross-examination by Mr. Cohn:

Q. Mr. Olsen, what does the word Tabacalera which is in general
53 usuage in the Philippine Islands refer to?

A. Well, the significance I have always given to it. it refers to the cigars or cigarettes manufactured by the Tabacalera company and to the tobacco factory and its products.

Q. Why do you say that it refers particularly to the tobacco factory and its output of the Compañia General de Tabacos de Filipinas?

A. I say that is the significance I have usually given to it myself, I don't know just what the meaning of the word itself is.

Q. Have you ever heard the steamers of the Compañia General de Tabacos referred to as Tabacalera boats?

A. Yes, that is quite true.

Q. What, then, would you say that the word Tabacalera as generally used here in the Islands refers to, wouldn't you say that it is used to refer to the whole company?

A. Yes, I suppose you would.

Q. Now is the name La Flor de Isabela ever ab-reviated, I mean in general usage in the Philippine Islands?

A. Well, I—I can't say that I have ever heard, that I have ever used it ab-reviated in any other way than Tabacalera.

Q. Haven't you on various occasions in your direct examinatio used it in an ab-reviated form, haven't you yourself referred to it a Flor de Isabela?

A. La Flor de Isabela, yes.

Q. Did you not just now use an ab-reviation of the name of th factory?

A. Well, that is the name of the factory as I understand it, L Flor de Isabela.

Q. And you believe that is the full name of the factory
54 La Flor de Isabela?

A. Yes, that is my understanding of it.

Q. Have you ever heard it called by any shorter name than that?

A. I have heard it called Isabela or La Isabela.

Q. By whom have you heard it so called?

A. I have heard, not the factory called that but the cigarettes w have had occasional calls for Isabela Cortos cigarettes of the Tabac alera.

Q. That is the name by which the cigarettes in Exhibit "P" ar know-?

A. I wouldn't say that they are always referred to as that, a Isabela Cortos, in fact they are usually referred to as Tabacaler Cortos or Tabacalera Largos, that is the way they are more generall called for by the trade.

Q. By what name are the cigarettes of the Compañia General d Tabacos de Filipinas known in the United States?

A. They are advertised there and known more generally as Isa belas.

Q. Have you any knowledge of the conditions prevailing in the cigar and cigarette markets other than the Philippine Islands and the United States in their line of goods?

A. No.

Q. In those countries to which your knowledge extends, Mr. Olsen, and with reference particularly to Philippine cigars and cigarettes, please state whether such cigars and cigarettes are distinguished and designated according to the factory by which they are manufactured or according to the tobacco which is in them.

A. According to the factory.

Q. Exclusively?
55 A. Yes, sir.

Q. No products of any factory manufacturing cigars and cigarettes in the Philippine Islands are known by the tobacco that is in them but they are known exclusively according to the factory, isn't that a fact?

A. How is that, the product of the factory or tobacco?

Q. The question is, the product of any cigar and cigarette factory in the Philippine Islands is not known by the tobacco which is in the cigar or cigarette but by the factory which manufactures it, isn't that a fact ?

A. Well it usually—every factory, every product of a factory in addition to the factory name has what is called in the trade a front mark, the front mark pertains to the shape of the cigar and is usually

followed by the name of the factory and the cigarettes the same way, Tabacalera Cortos would simply mean a short cigarette and Largos would mean a large cigarette and so on.

Q. By the shape for instance you mean the words perfecto, bouquet, excellente, and so on.

A. Yes, those are all front marks, those are designated as the front marks of the cigars, perfectos, londres, excellentes, they are all front marks.

Q. And each factory manufacturing cigars here in the Islands manufactures cigars of these well-known shapes, do they not?

A. Yes.

Q. And the way to distinguish, the way the public distinguishes between the cigars of any different shape is to give the name of the factory, is it not, that is they would call for a perfecto Insular for instance.

56 A. Yes, the name of the factory the brand, and the shape, the front mark.

Q. They do not distinguish between cigars of the various shapes by giving the name of the tobacco that is in the cigars?

A. No, that is a pretty difficult thing to say.

Q. And each factory makes cigars of the various tobaccos grown here in the Islands?

A. I understand they do.

Q. So if a man called for a Cagayan perfecto you would have no means of knowing just what he wanted, whether he wanted an Insular, Alhambra, Tabacalera or what?

A. You couldn't conscientiously give him one.

Q. Nearly all of the products of the Philippines are manufactured of blended goods, are they not?

A. Yes, usually Isabela the best grades, that is tobacco from the various parts of the Province of Isabela blended together.

Q. It is common practice, isn't it a fact, in the Philippine Islands, where the products of a factory are made of Isabela leaf tobacco to *to* announce that fact to the public when such is the case?

A. Yes.

Q. Those products so announced as being manufactured of Isabela leaf are not called Isabela for that reason, are they?

A. I di-n't get that, Mr. Cohn.

Q. Take for instance the products of the La Yebana factory, which are well known to you, are they not?

A. Yes, sir.

57 Q. And that company advertises the fact quite extensively, does it not, that their products are manufactured exclusively from the best Isabela tobacco?

A. Yes.

Q. There is no tendency on the part of the consuming public or the trade generally for that reason to designate the products of that factory as Isabela.

A. No.

Q. If a man desires La Yebana cigars it never occurs to him to ask for Isabela cigars, does it?

A. No.

Q. And if he called for an Isabela cigar what would you think that he wanted?

A. Well, to the trade we would give him a Tabacalera cigar if he called for an Isabela, and in people coming from the United States, in the United States the cigars of the Tabacalera are advertised and sold under the name of Isabela and La Isabela, and people coming from the States we have calls for Isabela cigars and cigarettes.

That is all.

Redirect examination by Mr. Rohde:

Q. If a man called for Bellezas what would you give him?

A. Bellezas Alhambra.

Q. Are there other Bellezas on the market here than those manufactured by your factory?

A. Not to my knowledge.

That is all.

Cross-examination by Mr. Cohn:

58 Q. Belleza is a shape, isn't it?

A. It pertains to that shape cigar, yes.

That is all.

Witness excused.

Mr. PRISING, a witness called by the defendant, being first duly sworn in open court, testified as follows:

Direct examination by Mr. Rohde:

Q. Please state your name, residence, and occupation.

A. F. W. Prising, No. 726 calle Mabini, Manila, merchant.

Q. How long have you been in the Philippine Islands, Mr. Prising?

A. Sixteen years.

Q. What has been your occupation during that time?

A. Most of the time in the tobacco business.

Q. Are you familiar with the various qualities of tobacco in the Philippine Islands?

A. Well, I don't know a great deal about tobacco.

Q. Do you know where the best tobacco grown in the Philippine Islands is produced?

A. Yes, sir.

Q. Where?

A. Isabela Province.

Q. Do you know of any cigarettes in the market here known as Isabela?

A. Yes, sir.

Q. By what factory are they made?

A. The Alhambra.

Q. Did you ever know of any cigarettes on the market here
59 known as Isabela before those put on the market by the Alhambra?

A. Not by Isabela itself, Isabela Cortos and Isabela Largos, yes.

That is all.

Cross-examination by Mr. Cohn:

Q. Isabela Cortos and Isabela Largos are cigarettes identically similar except in the size, are they not?

A. Well, I should judge so, I don't smoke cigarettes, I couldn't state.

Q. You don't know of any difference between Isabela Cortos and Isabela Largos or Entrelargos do you other than the size?

A. Oh yes.

Q. I don't think you understood the question. The question is, so far as you know the only difference between Isabela Cortos and Isabela Largos is the difference in size, that is, one is called Cortos because it is shorter than the other and the other is called Largos because it is longer than the other?

A. I suppose that is the only difference, yes.

Q. And there is a third size calle- Entrelargos, is there not?

A. Well, the Tabacalera Company makes an entrelargos cigarette I think, the entrelargo is a little smaller than the largo, about the same as I remember it.

Q. What is the difference between Isabela Cortos, Isabela Largos, and Isabela Entrelargos?

A. I don't know.

Q. Just how familiar are you with the various brands of cigarettes manufactured and sold in the Philippine Islands?

A. Well, I have been handling them for years and selling
60 them both retail and wholesale.

Q. Do you know this Exhibit "P"?

A. Yes, sir.

Q. What is it?

A. Isabela Cortos.

Q. Of what factory?

A. The Tabacalera.

Q. Do you know if these Isabela Cortos are in demand in the local market?

A. Yes, sir.

Q. What do the consumers call these cigarettes?

A. Isabela Cortos, the name that is on them.

Q. What do the consumers of the other size call these cigarettes that they require?

A. Isabela Largos.

Q. And the third size?

A. The third size they switch around a little bit, the- call them Isabela Entrelargos or Tabacalera Entrelargos, usually Tabacalera Entrelargos.

That is all.

Redirect examination by Mr. Rohde:

Q. Then these people who call for cigarettes as Isabela Largos, Isabela Cortos, or Isabela Entrelargos would have to give one of these three additions or adjectives in order to inform the seller what kind of a cigarette he wanted, would he not?

A. Yes, sir.

Q. They could never be called for as Isabelas?

61 A. Well, previous to putting the Alhambra Isabela on the market if a man came up and called for Isabelas you wouldn't know what he wanted without questioning him whether he wanted Isabela Cortos or Isabela Largos.

That is all.

Cross-examination by Mr. Cohn:

Q. How is that effected by the fact that the Alhambra Isabelas have been put on the market?

A. I do not find that there is any effect, if a man comes up now and asks for Isabelas we give him Alhambra Isabelas.

Q. Why is that?

A. Because I have never found a case yet where they said that wasn't what they wanted.

Q. Even if some man who formerly called for Isabelas desiring Isabelas of the Tabacalera Company and who you say you were obliged to question as to whether he wanted Cortos or Largos you give him Alhambra Isabelas?

A. Well, I don't remember having had any experience of that kind, if a man came up in the old times and asked for Isabelas we would ask whether he wanted Isabela Cortos or Largos but if a man comes up now and asks for Isabelas he is always given Isabelas Alhambra and I don't know of any case where they said that wasn't what they wanted.

Q. Some part of your experience in the Tobacco business has been in the United States, hasn't it?

A. Yes, sir.

Q. How much of it?

A. A little over four years.

62 Q. How are the products of the Tabacalera or the Compañia General de Tabacos de Filipinas known in the United States?

A. As Isabelas.

Q. Throughout, aren't they?

A. Yes, sir.

That is all.

Redirect examination by Mr. Rohde:

Q. Do you know anything about Virginia cigarettes, Mr. Prising?

A. Very little.

A. Of course in America.

Q. Very little.

Q. Well, what do you know about them, are there Isabela cigarettes in Virginia?
A. No, sir.

That is all.

Witness excused.

Mr. PIDERIT, a witness called by the defendant, being first duly sworn in open court, testified as follows:
Q. Please state your name, occupation, and residence.
A. Carl Piderit, merchant, Manila.
Q. How long have you resided in the Philippine Islands?
A. About six years.
Q. What has been your business during that period?
A. Always occupied in cigar factories.
Q. In what factory?
A. Five years in the Oriente then with the Flor de Intal and the- afterwards the Alhambra bought up the labels and everything.

63 Q. Do you know something about the exportation of leaf tobacco from the Philippines and how it is marked for exportation?

Mr. Cohn: Objected to as immaterial and irrelevant.

The plaintiff makes no pretense of any right to prevent people from calling their tobacco Isabela leaf tobacco or referring to their products as being manufactured of Isabela tobacco, or making any other use of the word Isabela in its primary significance.
Mr. Rohde: Mr. Cohn do you make any objection to people baling leaf tobacco and just marking the bale Isabela?
Mr. Cohn: The question of leaf tobacco is not in discussion here at all.
The Court: The court does not suppose that anybody would object to the use of the word Isabela in its primary or geograf-ical sense or as indicating the origin of the tobacco; I do not suppose there would be any objection to it in that sense.
Mr. Cohn: On the other hand if there is any use of the word Isabela brand there will be objection to it.

Q. I hand you a box, cigar box apparently, and ask you if you recognize that box?
A. Yes, sir.
Q. What is it, what factory or company?

64 A. Old Flor de Intal.

Q. How long has that box been used, if at all, by the Flor de Intal Company?
A. I believe since 1910 when the factory started, they just put up this name of the factory.

Mr. Rohde: I offer this cigar box in evidence as Exhibit "2".
Mr. Cohn: Objected to as immaterial, irrelevant.
The Court: Objection overruled.
Exception.

Cross-examination by Mr. Cohn:

Q. Is the La Flor de Intal factory still in existence?

A. Yes, new Flor de Intal, before when they make these cigar it is the old Flor de Intal when it first started up and I am th manager of that factory and then after that the Alhambra bough the labels and boxes and everything of the old Flor de Intal but no we are working in the same factory.

Q. You are the manager of the Flor de Intal factory?

A. I am manager of the old Flor de Intal before.

Q. For the Alhambra Company?

A. For itself.

Q. But the Alhambra bought up the Flor de Intal factory, you say?

A. No for itself, the old Flor de Intal.

Q. But you say the factory and trade marks and good will
65 of the Flor de Intal were all purchased by the Alhambra company?

A. No, not the Alhambra, rather Kuenzle and Streiff bought all the labels and boxes.

Q. And Kuenzle & Streiff are the principal shareholders in the Alhambra Company, are they not?

A. Yes.

Q. So the two factories are practically the same as one now aren't they?

A. Yes, sir.

Q. How many cigars have been manufactured and sold under this Mark, Exhibit "2"?

A. I do not know.

Q. Who does know?

A. I know that is the old Flor de Intal factory, I know they put up some under that brand and I sold very few of them, I sold only one box.

Q. How many boxes did the Flor de Intal Factory sell under that brand?

A. The Flor de Intal sold some.

Q. What do you mean by some?

A. A few thousand.

Q. Where did those few thousand go?

A. Exported to China, Shanghai I think.

That is all.

Redirect examination by Mr. Rohde:

Q. These few thousand, when were they sold, about what time?

A. I do not know.

Q. You were not in the old factory?

66 A. No.

Q. Then you mean some few thousand were sold of the stock taken from the old Flor del Intal factory?

A. No, that is what I heard of the manager of the old Flor de Intal factory, I do not know myself.

Q. You have been with the Flor de Intal factory how long?
A. Since November.
Q. Then prior to that you don't know how many cigars were sold of this kind, do you?
A. No, that is what I told you.

That is all.

Witness excused.

Mr. HOFFMASTER, a witness called by the plaintiff, being first duly sworn in open court, testified as follows:

Direct examination by Mr. Rohde:

Q. What is your name, occupation, and residence.
A. John C. Hoffmaster, manager of the Alhambra Cigar Factory, Manila.
Q. How long have you been a resident of Manila?
A. Nearly eighteen years.
Q. What has been your business during that period?
A. Cigar manufacturer.
Q. Have you ever been engaged in the manufacture of cigarettes?
A. Yes, cigarettes and cigars and all kinds of tobacco products.
Q. How long have you been engaged in the cigarette and cigar business in Manila?
A. Since I am here in Manila.
67 Q. Do you know or did you ever know of any cigarettes known as Isabela or Isabella or Isabelas before the Alhambra Company manufactured them?
A. Never, I never heard of them, never saw them.
Q. I hand you a small package of cigarettes, plaintiff's Exhibit "Q" and ask you who designed that package?
A. I designed that myself and took it over to the printer, to the lithographer to have it put up in the form that they are seen here.
Q. Can you tell us the purpose of the design?
A. That with these cirgarettes—we manufacture many grades of different priced cigarettes and they all are called Alhambra, they all have this name Alhambra on the package as shown in this one (Exhibit "Q") Alhambra in big plain letters on both sides of the package, but we manufacture machine made cigarettes only in cheap grades and as we intended to go into the higher grade we wanted to make up a cigarette to be put up of all first class leaf tobacco and as everybody out here knows Isabela tobacco is the best for that reason we called these cigarettes Isabela to make it distinctly known to the public this is a strictly Isabela leaf cigarette, as we say on the package, and that is the reason why we adopted this name of Isabela.
Q. Have you advertised these cigarettes extensively, Mr. Hoffmaster?
A. Yes, sir, we have done so in nearly all of the local newspapers.
Q. I hand you a bunch of excerpts, from newspaper apparently, and ask you to state what they are?

A. The first one——

68 Q. Just state in general what they are?

A. They are in general advertisements of the Isabela Alhambra cigarettes from newspapers.

Q. Are they advertisements published by you?

A. Yes, sir, they are.

Mr. Rohde: I offer them in evidence as Exhibit "3."

Mr. Cohn: No objection. That is the form of the advertisement since the beginning of this suit.

A. (Cont'd.) I can state that these cirgarettes have been advertised this way from the very first beginning and I can prove it.

The Court:

Q. What do you mean by the beginning?

A. We started about the middle of June to manufacture and advertise these cigarettes, and I can prove it by all of the papers, conclusively prove it by all the advertisements by us, that we have been advertising in the same way as has been done in these advertisements here.

Q. Do you know the Compañia General de Tabacos?

A. Yes, sir.

Q. How is that company generally known in Manila and the Philippine Islands?

A. It is the Compañia General de Tabacos Filipinas and the Tabacalera.

Q. How is its ouput referred to?

A. You refer to what output?

Q. All the output.

69 A. Well, I only know about the cigars and cigarettes, they are generally referred to as Tabacalera goods.

Q. I hand you t-o letters, Mr. Hoffmaster, marked for identification Exhibits "4" and "5" and ask you what they are.

A. Well, the first is a letter from Mr. Kincaid.

Q. And the other?

A. Is from Messrs. Hausermann, Cohn & Fisher, signed by Mr. Cohn.

Mr. Rohde: I offer in evidence the documents Exhibits "4" and "5."

No objection.

Q. I hand you a document marked for identification Exhibit "6" and ask you to state what that is?

A. Well, this is a statement about 1,221 bales of Manila tobacco offered for sale in Bremen, Germany.

Q. Made by whom?

A. It does not appear here.

Q. Do you know by whom that was made?

A. This statement is made by Mr. Bromberger of Bremen.

Q. Sent to whom?

A. Sent to Messrs. Kuenzle & Streiff in Zurich.

Q. And by them?

A. By them referred to the Alhambra Cigar Factory here in Manila.

Q. I ask you to state what these ab-reviations and words written in German signify?

A. On the first page the conditions of sale are given and on the second page is the heading "Manila/Isabela"; the ab-reviations mean the marks of the bales and the number of bales, the crops, the
70 corresponding crops, the average weight per bale and the price per bale, etc.

Q. "CTF/YA", what does that mean?

A. Probably means, as far as I know to the Compañia Tabacalera Filipinas.

Q. And the word "Isabela" on top, what does that signify?

A. That signifies that this tobacco is Isabela tobacco, which even in foreign markets is known as a superior grade of tobacco and therefore sells at a higher price than other tobacco.

Q. Please turn to the next page and state what the words at the top of the page signify?

A. The words at the top of the page state "Manila/Union."

Q. And that signifies what?

A. And also here they give the marks of the bales and the weights and the year of the crop and the prices also.

Q. "Union" means what there?

A. Union means that this tobacco here comes from Union province.

Mr. Rohde: I now offer in evidence all of the documents Exhibits "6" to "15", inclusive, Exhibit "6" being the document just identified by the witness and Exhibits "7" to "15" being advertising matters and periodicals wherein the various factories of Manila and their products are referred to, to show the knowledge and designations by the public.

Mr. Cohn: No objection to the admission of the Exhibits for what they may be worth.

Q. Mr. Hoffmaster, in your opinion could any person be
71 deceived by this package Exhibit "Q" and buy the same for any product of the Tabacalera Company?

Mr. Cohn: Objected to as incompetent, irrelevant, and immaterial and an attempt to have the interested witness decide the merits of this case, whereas, the decision is with the court.

Mr. Rohde: I will not insist very strongly upon the question if counsel for plaintiff maintains that it is a question to be determined by the court itself from the packages.

The Court: Dealers in articles may be asked if the public might be deceived by the purchase of such articles. The objection is overruled.

Exception.

A. No, in my opinion they could not be deceived in any way, be-

cause this package does not exist and did not exist in the market before we manufactured these cigarettes and it is plainly marked by the broad blue ribbon around the package and the gold paper, and furthermore it says very plainly in big plain letters, Alhambra, on both sides of the package.

Q. When you determined on manufacturing this particular cigarette did you have in mind competition with any company?

A. Yes, sir, we had in mind to put up a high grade article to enter into competition with the better grades of machine made cigarettes, which are the Insulars, but we did not have the intention to immitate any existing package on the market we simply wanted to enter
72 into competition with the existing trade of the Insular.

Q. Is the package Exhibit "Q" a machine made cigarette?

A. Yes, sir.

Q. How is the cigarette made that has been here referred to as Isabela Cortos and Isabela Largos, Exhibit "P"?

A. They are made by hand.

Q. They are hand-made cigarettes?

A. Yes, sir.

Q. What other difference is there between each particular cigarette?

A. Well, there is one difference, that these cigarettes (Exhibit "Q") are closed at one end, whereas hand-made cigarettes are open at both ends, furthermore these cigarettes (Exhibit "Q") are plainly marked, every one, Alhambra Isabelas, whereas these cigarettes referred to (Exhibit "P") do not have any mark on them, any stamp.

Q. Now Mr. Hoffmaster is there any further statement you desire to make?

Mr. Cohn: Objected to.

Mr. Rohde: Strike out the question.

Q. Where is the best cigarette tobacco in the Philippine Islands produced Mr. Hoffmaster?

A. Isabela province.

Q. Do you know about the output of that province?

A. I do not know exactly because it varies as to the different crops.

Q. Could you give it to us roughly?
73 A. I could not at the present moment.

Q. Could you state the principal buyers of that tobacco?

A. Yes, sir.

Q. Who are they?

A. There is the Insular, Campañia General de Tabacos, Alhambra, Oriente, Messrs. Weber and also Chinese dealers, and in lots of instances the Philippino planters themselves bring their tobacco down to Manila for sale.

Q. That is, the output of Isabela is by no means consumed by the Tabacalera?

A. No, absolutely not.

Mr. Rohde: I now introduce Exhibit "16." That is all.

Cross-examination by Mr. Cohn:

Q. The Alhambra Cigar & Cigarette Factory manufacture various products in addition to cigarettes, does it not?

A. Various products, yes.

Q. And each one has its brand name, has it not?

A. Well, they have the brand name Alhambra besides having front marks, every cigar has its front mark.

Q. They manufacture sever- different kinds of cigarettes, do you not?

A. Yes.

Q. How are the different kinds distinguished?

A. Different size package, different color, different lithographing, and by front marks.

Q. What do you mean by front marks?

A. For instance Alhambra Londres, Alhambra Especiales, Alhambra perfectos.

74 Q. Alhambra Londres and Perfectos are not cigarettes, are they?

A. They are cigars.

Q. How are the different kinds of cigarettes distinguished one from the other?

A. By names.

Q. What are the names?

A. Sinac Tala, then we have Brand No. 6, Brand No. 5, we have a brand No. 3, we make entrelargos, we make entrecortos, we make cortos, etc., quite a lot of different cigarettes which all have their different forms and names.

Q. And recently you have in addition to these different kinds, Isabelas?

A. Yes, sir.

Q. You say that those commenced to be manufactured in June of this year?

A. I could not state exactly the date but it was in the beginning of June.

Q. You say that your object in getting out this brand of cigarette you call Isabelas was for the purpose of building up a trade for yourself in high grade machine-made cigarettes?

A. Yes, high grade machine-made cigarettes.

Q. You were building up that trade for yourselves and not for others, were you not?

A. Yes, sir.

Q. Exclusively for your own use and benefit, was it not?

A. That is our intention.

Q. You have had legal advice regarding the suitability of the word Isabela as a name for these cigarettes, have you not?

A. Yes, sir.

75 Q. And you have been advised that the name Isabela was common property and could be made use of by anybody?

A. Yes.

Q. That you couldn't have that name exclusively for yourself because anybody could use it, it being common property?

A. Yes, we have had that.

Q. You have had that?

A. We have had that advice, that Isabela is a geographical name and we could go ahead and use it, and I asked Mr. Rohde, after these letters written by Kincaid and Mr. Cohn, if we could go ahead and manufacture these cigarettes under this name and we were told yes.

Q. And the ground on which you were told you could use this name was because it could be used by anybody, that it is common property?

A. No, because it is a geographical name as I stated before.

Q. And that it being a geographical name it was common property and could be used by anyone?

A. And furthermore I used it as I already stated in my previous statement we used that name just to the public that the cigarette is an Isabela cigarette, that is is made from Isabela tobacco like we say on the package.

Q. If you were engaged in building up a trade for your own exclusive use and benefit how do you account for the fact that you used as a brand name for that trade a name that could be used by anybody?

A. We were using this name because it was not our intention to use that principally but merely for the purpose to call the attention of the people to the fact that these cigarettes were made from
76 Isabela tobacco, from tobacco grown in Isabela province. It is of no significance for us to use this word Isabela like that because on top we have our factory name Alhambra, which is very well know- to the whole world, we have the name, as a matter of fact on both sides of the package, plain words, big letters. I am just explaining how this thing of common names like provinces come to be used by us for this cigarette. Like for instance we ma-e londres, perfectors, excellentes, they are all common makes, still when we come out and manufacture Excellentes the people start out immitating and making their cigars the same way, just to try to do us some harm.

Q. Even though they knew that this name was a common name which could be used by anybody?

A. Yes, we make Alhambra Excellente and then they all start to make that shape.

Q. Excellente is a brand name or a shape name?

A. Brand name, Alhambra Excellente.

Q. It does not designate the shape or size of the cigar then?

A. That is our brand name.

Q. Mr. Olsen was mistaken in his statement then, to the effect that such names as Excellente, Perfect, and Londres are front names and merely indicate the size and shape of the cigar?

A. I don't know, I did not hear Mr. Olsen, I don't know whether he might have said that. We came out with this size and naturally our imitators begin making still other excellentes and putting on the market here at lower figures, to the best of my knowledge.
77 That is what I know about this; I know so much and no more.

Q. You say that the Tabacalera Company does not begin to control the output of Isabela tobacco?

A. No, in no way whatever.

Q. How do you account for the fact that laymen believe that it does?

A. Well, I have been up there several times myself, our company is established in Angadanan, Isabela province, and we can buy any amount of tobacco we want.

Q. I do not make any question of that, Mr. Hoffmaster, my question is, in view of the fact that you export tobacco from Isabela province and so do other factories how do you account for the fact that the layman identifies Isabela tobacco and Isabela province with the La Flor de Isabela factory?

A. I do not understand the meaning of layman.

Q. By a layman I mean a man not in the cigar business.

A. There are lots of things talked in this city and it is merely talk; somebody might say it just for the sake of doing harm to us or doing harm to anybody; as a matter of fact I do not know it, I never heard it.

That is all.

Redirect examination by Mr. Rohde:

Q. You say you never knew or never heard it?

A. Yes, sir.

Q. Mr. Hoffmaster when did you speak to me for the first time about this label Exhibit "Q"?

A. Well, that was after we received a letter from Messrs.
78 Hausermann, Cohn & Fisher, I called at your office and brought this package of cigarettes with me and ask you about whether we can continue using this label and you told me we could, that it is a geographical name and anybody can use it.

Q. You never asked my advice about the use of the word Isabela before that time, did you?

A. Never.

That is all.

Witness excused.

Mr. McMicking, a witness called by the defendant, being first duly sworn in open court, testified as follows:

Direct examination by Mr. Rohde:

Q. Please state your name, occupation, and residence.

A. José McMicking, Clerk of the Court of First Instance of Manila, Manila.

Q. How long have you been smoking cigarettes here in the Philippines, Mr. McMicking?

A. About ten years.

Q. And you smoke cigarettes of what factory?

A. Tabacalera, Insular, I am not particular.
Q. Did you ever hear of Isabela cigarettes before this year?
A. No.

That is all.

Cross-examination by Mr. Cohn:

Q. Did you ever hear of or see the cigarettes here before you——
79 A. Yes, I have heard of the factory Flor de Isabela.
Q. By what name have you known these cigarettes Exhibit "P"?
A. I have seen these cigarettes before.
Q. By what name are they known?
A. Flor de Isabela.
Q. Who knows them by that name?
A. I don't know, I suppose people who smoke them.
Q. Do you know the name of these cigarettes?
A. No, I never smoked them.
Q. They are not known to you by name?
A. No.

That is all.

Witness excused.

Mr. BLANCO, a witness called by the defendant, being first duly sworn in open court, testified as follows:

Direct examination by Mr. Rohde:

Q. Please state your name, occupation, and residence.
A. Benito Blanco, Interpreter, Court of First Instance of Manila, Calle Gastambide, Manila.
Q. How long have you smoked cigarettes, Mr. Blanco?
A. Perhaps about forty or fifty years.
Q. From what factory?
A. I generally smoke Insular.
Q. Have you ever smoked Tabacalera cigarettes?
A. Yes, sometimes.
Q. Did you ever hear of Isabela cigarettes before the beginning of this year?
80 A. I never heard.

That is all.

Cross-examination by Mr. Cohn:

Q. Do you know these cigarettes Exhibit "P"?
A. No.
Q. Never seen them before?
A. No.

That is all.
Witness excused.

Mr. MEYER, a witness called by the defendant, being first duly sworn in open court, testified as follows:

Direct examination by Mr. Rohde:

Q. Please state your name, occupation, and residence.
A. P. A. Meyer, manager of Kuenzle & Streiff, Santa Mesa, Manila.
Q. How long have you been in the Philippine Islands?
A. Going on fourteen years.
Q. When did you see this label for the first time, Exhibit "Q"?
A. I saw this label for the first time, if I remember correctly, about the latter part of June, I think after the 15th, when Mr. Hoffmaster came down to the office and he brought two of these packages with him and he said, "now, Mr. Meyer, we are going into another trade of cigarettes we have not done so far, we are going to make a first class machine-made cigarette, what do you think of the package?" I said I thought it looks rather attractive, I think that is all right. Then he said, "do you know why I put that on
81 this package?" Then I asked him why and he told me, "it is going to be one of our specialties, we are going to make these cigarettes out of all first class Isabela leaf tobacco."

That is all.

Cross-examination by Mr. Cohn:

Q. Mr. Meyer, you are the principal shareholder of the Alhambra Company, are you not?
A. Yes, sir.
Q. Your factory has several different trade marks and trade names has it not?
A. Yes, sir.
Q. And they are registered in the Bureau of Archives?
A. I believe all of them, yes, sir.
Q. And you do not want anybody else to manufacture cigars or cigarettes under those registered trade marks or trade names, do you?
A. No, sir.
Q. You would not permit or allow anybody else to use those registered trade names, would you?
A. No, sir.
Q. And you wouldn't adopt a trade name for a cigar or cigarette that could be used by anybody that cared to without some special object in view in so doing, would you?
A. What do you mean? No, as trade mark, no.
Q. Or as a trade name?
A. Well, I call a trade name, names such as perfector, excellente any of those names, we can not prevent anyone from using
82 those names; I do not know what you mean.
Q. You wouldn't give a name to a product of your factory, to a cigar or a cigarette that would be liable to be used by anybody who desired to use it would you?

A. If we can prevent it, no.

Q. And if you do that it is for a particular purpose, is it not?

A. Well, I say if we can prevent it, that is for instance general names as have been mentioned here, excellentes, our factory has made the first excellentes here and we could not register the name excellente, but we could register the name Alhambra Excellente. The name excellente is worth a great deal to our factory from the fact we made the first excellentes here and they are a popular cigar and from the fact all our competitors began to make cigars like that, and we could not register that name that way alone, everyone knows that, but the trade mark or trade name Alhambra Excellente we could register. The same way we can not register these cigarettes Isabelas but we can register them Alhambra Isabelas.

Q. In other words these cigarettes are registered as Alhambra Isabelas?

A. Yes, sir.

Q. Because your application for registration as Isabelas was refused?

A. I do not know, I have not made the application.

Q. Why do you state that the cigarettes were registered as Alhambra Isabelas because you could not register the name of Isabela alone?

A. Because I understand general terms or general names
83 like that could not be registered, anybody could use them that wants to.

Q. You were aware that Isabelas could not be used by yourselves exclusively, that it was a trade name which could be used by anybody as well as yourselves?

A. No, I never considered Isabela to be a trade name.

Q. Are you using it as a trade name for a particular cigarette?

A. We use Isabela in conjunction with Alhambra, we have the name Alhambra Isabelas.

Q. As the name of a cigarette?

A. Yes.

Q. In adopting this name for use you were of the opinion that anybody could manufacture cigarettes and call them Isabelas?

A. Yes, decidedly, because I never had any idea that anybody can take a name like that.

Q. In addition to your being president of the Alhambra Cigar & Cigarette Factory your firm is the principal stockholder of the Alhambra Company, is it not?

A. No, not the firm, some of the member- of the firm.

Q. You are a stockholder yourself, are you not?

A. No, I am not.

Q. But the people you represent are?

A. Yes, sir.

That is all.

Redirect examination by Mr. Rohde:

Q. All you have stated about how this is registered is from hearsay, is it not?

A. Yes, sir.

84 Q. You do not know just how it is registered, do you?

A. No, I have seen the registration papers but I have not read them over carefully.

Mr. Rohde: I offer in evidence the trade mark of the package Exhibit "Q" as Exhibit "17," and any of the other exhibits that have not been formally introduced by defendant which were used by it, and rest.

Rebuttal by the Plaintiff.

Mr. URMENETA, recalled:

Q. I hand you this box, Mr. Urmeneta, marked defendant's Exhibit "2," and ask you if you have ever seen anything like that before?

A. This is the first time that I have seen this box and this trade mark.

Q. Have you or the company you represent ever had any previous knowledge of that article represented by Exhibit "2"?

A. No, sir, if we had we would have immediately consulted our attorneys.

Q. Consulted your attorneys for what purpose?

A. To prevent their continuing the sale of these because it would prejudice us.

Q. Have you a very good knowledge of the marks and labels of cigars and cigarettes exported from the Philippines?

A. Yes, general knowledge.

Q. If cigars had been sold, marketed or exported under this name of Reina de Isabela would you have known it?

A. Yes, sir.

85 Q. Please state whether these cigars have been marketed or exported under this name of Reina Isabela in any quantity.

A. I can not tell, this is the first time I have seen it.

Q. But if it had been exported in any quantity would you have known about it?

A. Undoubtedly.

That is all.

Cross-examination by Mr. Rohde:

Q. You think that the phrase "Reina de la Isabela" is an infringement upon your rights?

Mr. Cohn: Objected to as immaterial.

The Court: It is cross examination. Objection overruled. Exception.

A. I have no particular opinion regarding that, otherwise I would not have to consult a lawyer.

Q. But you would have considered it of sufficient gravity to consult your lawyer about it?

A. From the moment I go to consult a lawyer it shows that I am not satisfied with my own opinion.

That is all.

Plaintiff rests.
Case Closed.

I hereby certify that the above is a true and correct transcript of all of the stenographic notes taken by me in the above-entitled case.

Manila, P. I., August 7, 1914.

(S'g'd) S. A. DEWING,
Official Reporter.

86 EXHIBIT "A."

Translation of Document Offered and Admitted in Evidence as Plaintiff's Exhibit "A."

Don Emilio Ferrero y Perinat, Lieutenant-General of the National Armies, Governor and Captain-General of the Philippine Islands, etc., etc.,

Witnesseth: That Whereas His Excellency, Don Lope Gisbert, General Manager in these Islands of the Compañia General de Tabacos de Filipinas, acting in the name and on behalf of the said corporation, has proved in due form and by competent evidence that the said corporation is the sole owner and possessor of the trade-names and trade-marks used by it to distinguish the products of the cigar and cigarette factory established by it in this city, the descriptions of which are as follows:

(1) *Trade-names.*

Flor de la Isabela.
La Montanesa.
Malabon.
Princesa.
Meisic, and
Cavite.

(2) *Trademarks.*

There is but one for all the products of the factory, a facsimile of which is attached marked with the letters A and B; it consists of a shield surmounted with a mural crown, divided into four quarters which contain, in the order in which they are mentioned, a tobacco plant, a brig on the sea with all sails set; a factory building; and several clumps of sugar-cane. In the center there is a
87 shield bearing the arms of the City of Manila; above and below are two ribbons bearing the name of the company, and on each side the words: "Trade mark."

Labels.

The label marked with the letter "C" is a special label of the "Flor de la Isabela." Upon a background of tobacco leaves and agricultural implements there is shown a ribbon forming a circle, with the words "Compañia General de Tabacos de Filipinas." In the center of the circle under the royal crown are shown the shields of Spain and of the City of Manila, overlapping, and under them the word "Barcelona." Above and below the circle are two small rectangles enclosing the name of the factory.

The design marked with the letter "D" is the label of the Montanesa brand and consists of a pleasant landscape with a river in the background and in the foreground a mountain girl in native costume. The upper part of the lab*le* bears the words "La Montanesa,"—"Fabrica de Tabacos." The lower part bears the word "Manila."

The design marked "E" is used to embellish the inside of the cover of the "Flor de la Isabela" boxes, and consists of a view of the Pasig River surmounted with the name of the factory; on the right side there is a bonga palm and on the left a banana plant; above there is a ribbon bearing the name of the company and below another bearing the word "Manila." On each of the four corners of the square enclosing the label there is a medallion insert showing native landscapes and bamboo huts.

The design marked "F," which is used for the same purpose as the one last described, consists of an oval within which is shown a group of men and women engaged in the work of sorting and cleaning tobacco leaves.

88 The design marked in the letter "G" is used for the purpose of embellishing the interior of the "Montanesa" brand cigar boxes and consists of a landscape on the left with an Indian woman in the foreground sitting on a case of cigars, engaged in smoking. At her feet there are shown an anchor and a number of cigar boxes. In the middle there is a card insert bearing the words "La Montanesa Fabrica de Tabacos, Manila", and at the right a boy tying up a package of cigar boxes.

The design marked with the letter "H" is also used for embellishing the interior of the "Montanesa" cigar boxes, the name of which appears at the top of the design. At the right the same figures of a mountain girl appearing in one of the designs above described, is shown. To the right of her there is a seascape with a boat in the foreground from which two boys are unloading cigar boxes.

The design marked with the letter "I" is used as a cover label for the boxes containing native cigars made in the factory of the company. It is divided horizontally by a straight line. In the upper square is shown the design of the front and back of the medal of honor awarded to the company at the Exposition held in Manila in 1882. Above the medal is shown the name of the company, with the words "Purveyor to the Royal Mansion." On the left appears the word "Amsterdam 1883, Certificate of Honor." On the right are the

words "Manila—1882. Award of Honor." In the lower square are shown a shield surmounted by the arms of the City of Manila and the words "Diploma of Honor, Antwerp—1885." On each side is shown a bonga tree with a tobacco plant growing at the foot of the tree, and in the center of the shield is the following legend:
89 "Manila—Compañia General de Tabacos de Filipinas—Factories—Flor de la Isabela—La Montanesa—Meisic—Malabon—Princesa—Cavite."

The labels of the designs shown under the letters "J", "K", "L" and "M" are used for wrapping cigarettes made in the "Flor de la Isabela" factory, and consist principally of two squares in the left of which is shown the bust of a woman, the design being different in each label, and to the right an Indian woman in a sitting position, to whom a negro is offering cigars. These two squares are separated by inscriptions bearing the name of the factory, the top being surmounted by an arabesque design and below by a landscape.

The labels marked with the letters "N", "Ñ" and "O" are used for the same purpose as the ones last described. They are all composed of variations of arabesques, scrolls and landscapes, the dominating feature being the arms of Spain overlapping the arms of Manila, surmounted by the royal crown and bearing the names of the company and of the "Flor de la Isabela."

The labels marked with letters "P", "Q", "R" and "S" are also used for marking cigarette packages, but are used for the products of the "La Montanesa" factory. They are composed of two squares, the one to the right showing the figure of a woman, the design being different in each drawing, and in the left the figure of the mountain girl above described, and of a boy unloading cigar boxes from a boat. Below each there is a landscape view.

The labels marked "T" and "U" are used for wrapping cigarettes from all the factories of the company, and consist, in the upper portion, of a landscape, and below the trade name of the company's factory; to the right is a hieroglyphic in the first label and a letter of the alphabet in the second, and in the left the names of the company and of the two factories.
90

The model marked with the letter "V" is used as a label on the packages of longcut smoking tobacco prepared in the "Flor de la Isabela Factory," and consists of a circle around the interior border of which appears the name of the factory. In the foreground there is an Indian woman in a sitting position surrounded by cigar boxes, and in front of her a negro boy offering cigars. The design is surmounted by the name of the company and at the bottom appears the word "Manila", with a description of the quantity and class of the longcut tobacco contained in the package, the whole being surrounded by a fancy border design.

Finally, the label marked with the letter "X", which is used for the same purpose as the one last described, differs from the latter only that in place of the sitting Indian woman the shield of Spain overlapping the shield of Manila is shown, both shields being surmounted by the royal crown.

Therefore, by virtue of the provisions of the trade-mark regulations

in force I issue to the company this certificate of ownership which gives it the right to all the benefits conferred by the law, and authorizes it to prosecute before the courts all persons who may endeavor to usurp or counterfeit the lawful rights hereby conferred.

This title shall be countersigned by the Director of Civil Administration and registered in the Bureau of Agriculture, In-
91 dustry and Commerce, without which it shall be of no value or effect.

Done in Manila, the 5th day of April, 1887.

(Sgd.) EMILIO FERRERO,
The Governor-General.

(Sgd.) ANTONIO DE VILLAVE,
The Director-General.

[Seal Bearing Central Office of Civil Administration, Philippines.]

Recorded in the Bureau of Agriculture, Industry and Commerce under No. 45, at Folios 21 and 22 of the Register of Trademarks.

Manila, April 5, 1887.

(Sgd.) ANTONIO MARTEL DE GOYENA,
Officer in Charge of the Bureau.

NOTE.—There are attached to the original, facsimiles of the marks and labels described in the body of the certificate.

92 EXHIBIT "B."

Plaintiff's Exhibit "B" is a copy of a paragraph of a letter received from plaintiff's New York agent under date of January 23, 1914, which reads as follows:

"In one instance we are more than disappointed. The largest and "most influential jobbing house in Boston is McGreenery & Man-"ning, and for some time past we have been working for this busi-"ness.—At the close of last year it was practically promised us, the "firm knowing well the excellent product of the "Isabela"; being "satisfied with the samples they saw and being satisfied with the "price.—We expected to receive their initial order after the 15th "of January, but upon going to Boston this week to obtain this "order, the buyer informed us that he was sorry to have to admit "that he had placed the order with the "Yebana" Factory.—We "protested that this was not the treatment we had expected, but they "tried to explain that there were certain conditions and inducements "held forth by the Manila Commercial Company, which made it "imperative for them to place the business in that direction.—They "acknowledge that ours was a better cigars, and that undoubtedly "they would have been more satisfied with shipments made by us, "and yet they pass us by."

EXHIBIT "C."

Plaintiff's Exhibit "C" is a copy of a paragraph in a letter from plaintiff's New York agent, addressed to the Manila office, dated February 20, 1914, which reads as follows:

"I am giving you conditions exactly as I found them and it cer-"tainly seems to me that to place our brand with the right houses a "missionary man must be employed to aid the jobbers. We want "volume. We have the goods and we ought to get the business. "Why is Kelly doing such a large business, when he has nothing "like the quality of the 'Isabela'? I know what he has done for "Austin, Nichols & Co. and undoubtedly he has done it for others. "I should mention that throughout the South a foil cigar is the only "one that sells as a 5¢ cigar. If properly established, we could no "doubt wean the trade away from this, and give them better value "with our 'Perfecto' or 'High Life A.' I called at the United Cigar "Stores in every city I visited, and found they all carried 'Isabelas', "and had received advice from headquarters that this was the brand "to push. The chief business seemed to be in Londres, as for a 5¢ "Manila they sold Kelly's foil wrapped 'Flor de Germann.'"

93 EXHIBIT "D."

Plaintiff's Exhibit "D" is a letter addressed to the New York office of the plaintiff corporation by the Vice-President of the United Cigar Stores, dated New York, February 27, 1914, which reads as follows:

"United Cigar Stores Company, 44 West 18th Street, New York, " February 27, 1914. Compania General de Tab. de Fil. Co., New " York. Gentlemen:—When replying, please refer to SW. Con- " firming our telephone conversation of this A. M. we would thank " you to cable your Manila factory to double up on the shipment of " Flor de Isabella Perf. 1/40 in the month of March.

"This means that they are to ship 100,000 of these cigars instead " of 50,000 as ordered. You may also include in this cable that we " are sending orders for 100,000 Isabella Perf. 1/20 to be shipped " 25,000 monthly and 200,000 Isabella Perf. 1/40 to be shipped " 50,000 monthly; shipments on these orders to begin in the month " of April.

"These orders are being sent to you in the regular way.

"Thanking you for your attention to this matter, Respectfully " yours, (Signed) W. Baeder. Vice President."

EXHIBIT "E."

Plaintiff's Exhibit "E" is a letter from Messrs. Havre & Company of San Francisco, California, addressed to plaintiff's Manila office, under date of April 8, 1914, which reads as follows:

"Per 'Empress of Russia' From Seattle April 16, 1914. April 8,

"1914. Cia. Gral. de Tabacos de Filipinas, Manila. Dear Sirs:—
"We duly received your favor of Feb. 27th, contents of which are
"duly noted, and are checked up as O. K. Ehrman Bros. & Co. have
"asked us to have the paster 'La Flor de la Isabela,' which goes on the
"end of the boxes, as per sample we enclose herewith, changed as fol-
"lows:—Make the strip about half as wide again as the enclosed sam-
"ple, and instead of the words 'La Flor de la Isabela', put on just
"the one word 'Isabela' in large letters. Ehrman Bros. say their cus-
"tomers claim that the lettering on this strip is too small for the cus-
"tomers to notice it readily behind the counter, whereas a large let-
"tering of the word "Isabela" will be much more attractive and more
"noticeable. Furthermore, the trade here knows the cigars as 'Isa-
"bela' pure and simple. Marx Bros. These people have requested
"that you put their name on the hinge strip of the boxes 'Marx Bros.
"Distributors', similarly to what you are doing for H. Jevne Co., Los
"Angeles. Without anything further for today, we remain, Yours
"very truly (Sgd.) G. B. Havre & Co. HJ."

94 EXHIBIT "F."

Plaintiff's Exhibit "F" is an advertising circular issued by Marx Bros., Manila cigar dealers of San Francisco, California, in which they make the following announcement:

"On April 12, 1914, we will receive via S. S. 'China' our first ship-
"ment of Isabella Manila Cigars."

EXHIBIT "H."

Plaintiff's Exhibit "H" is a requisition from the Benguet Commercial Company dated Baguio, Benguet, P. I., May 5, 1914, for thirty packages of cigarettes of plaintiff's manufacture ordered under the designation of "Isabela Cortos."

EXHIBIT "I."

Plaintiff's Exhibit "I" is an order from a merchant at Catbalogan, Samar, dated February 7, 1914, for 200 packages of cigarettes of plaintiff's manufacture under the designation of "Isabela Cortos."

EXHIBIT "J."

Plaintiff's Exhibit "J" is an order from a merchant in San Fernando, Union Province, P. I., dated April 25, 1914, for 1,500 packages of cigarettes of plaintiff's manufacture specified under the designation of "Isabela Cortos."

EXHIBIT "K."

Plaintiff's Exhibit "K" is a letter from a merchant in Nueva Caceres, P. I., dated April 8, 1914, containing an order for 200 packages of cigarettes of plaintiff's manufacture designated in said letter under the name "Ysabela cortos."

EXHIBIT "L."

Plaintiff's Exhibit "L" is a letter from a merchant in Legaspi, Albay, P. I., dated May 16, 1914, containing an order for 30 packages of cigarettes of plaintiff's manufacture designated
95 in said letter under the name of "Isabela Cortos."

EXHIBIT "M."

Plaintiff's Exhibit "M" is a letter from a merchant in Jolo, Moro Province, P. I., dated February 5, 1914, ordering 2,000 packages of cigarettes of plaintiff's manufacture designated in said letter under the name of "Isabella Cortos."

EXHIBIT "N."

Plaintiff's Exhibit "N" is a printed price current of the cigars and cigarettes manufactured by plaintiff at Manila, P. I., issued July 1, 1913, in which prices on plaintiff's long-cut cigarettes are quoted under the names of

Isabela Short
Isabela Medium
Isabela Long.

EXHIBIT "O."

Plaintiff's Exhibit "O" is a cardboard box in which the cigarettes of plaintiff's manufacture are offered for sale in retail in lots of ten. On the front and back of the boxes are the words "Isabela Cigarettes", and on the sides, "Famous Isabela Cigarettes."

EXHIBIT "P."

Plaintiff's Exhibit "P" is a package of cigarettes of plaintiff's manufacture on the exterior of which the words "Isabela Cortos" are printed.

EXHIBIT "Q."

Plaintiff's Exhibit "Q" is a package of cigarettes of defendant's manufacture, on the exterior of which the words "Isabela Cortos" are printed.

96 *Defendant's Exhibits.*

EXHIBIT 1.

Defendant's Exhibit "1" is a piece of jute sacking of the kind used to cover bales of tobacco in preparation for shipment.

EXHIBIT 2.

Defendant's Exhibit "2" is a cigar box bearing the name of the "Flor de Intal" factory.

EXHIBIT 3.

Defendant's Exhibit "3" consists of six clippings from Manila newspapers containing advertisements of cigars of defendant's manufacture under the name of "Alhambra Isabelas", each of which contains an illustration of a paper package of cigarettes on which is printed in bold type the words "Alhambra Ysabelas."

EXHIBIT 4.

Defendant's Exhibit "4" is a letter addressed to Messrs. Kuenzle & Streiff, under date of March 17, 1911, which reads as follows:

"Law offices of W. A. Kincaid, Thomas L. Hartigan, Manila, "March 17, 1911. Messrs. Keunzle & Streiff, Manila. Dear Sirs:— "Herewith beg to hand you the license of the Tabacalera Company "with reference to the pig-tail cigar, and also a letter of explanation "from Mr. Cohn, which seems to be all that was desired by your Mr. "Hube, and which we feel sure will be satisfactory, and in conse- "quence thereof we have today addressed a letter to Messrs. Hausser- "mann & Cohn, a carbon copy of which is enclosed. Very sincerely "yours, (Sgd.) W. A. Kincaid. Enc."

EXHIBIT 5.

Defendant's Exhibit 5 is a letter from Haussermann, Cohn & Fisher, dated Manila, March 16, 1911, addressed to Mr. W. A. Kincaid, which reads as follows:

97 "Haussermann, Cohn & Fisher, Counsellors at Law. Ma- "nila, P. I., March 16, 1911. W. A. Kincaid, Esq., Manila,

" P. I. Dear Sir:—We beg leave to acknowledge the receipt of your " letter of March 16th, relative to the license executed by the Com- " pañia General de Tabacos de Filipinas in favor of Messrs. Kuenzle " & Streiff relative to the manufacture of cigars under the patented " process of the former. In reply thereto, we beg leave to assure you " that the restrictions of Clause 4 is equally applicable to the names " adopted by your clients for their cigars as to those of the Tabac- " alera. It was only because we fully recognized that the law of trade " mark and unfair competition would prevent us from infringing " your names that no mention of the latter was made, and on the " other hand, Clause 4 was introduced only to avoid a misconception " of the extent of the license that was being granted. Relative to " Clause 7 of the license, we would say that your construction is quite " acceptable. We have no idea of expending our money uselessly in " the event, that after fair and reasonable litigation it should be " definitely decided that we can not maintain the patent, and cer- " tainly will not require you to do so. The object of Clause 7 is " merely to require your clients to defray one half of the expense of " reasonably protecting and enforcing the patent, which under the " license is almost of as much value to you as to us. Sincerely yours, " Haussermann, Cohn & Fisher, pp. (Sgd.) Charles C. Cohn."

EXHIBIT 6.

Defendant's Exhibit "6" is omitted, it being stipulated that it is correctly described in the testimony of the defendant's witness Hoffmeister, on pages 59 et seq. of the stenographic notes.

EXHIBIT 7.

Defendant's Exhibit "7" is an advertising card used by defendant to advertise the output of its cigar and cigarette factory, which contains the following statement:

"This factory uses none but the finest selected 'Isabela' leaf in all " their high grade cigars".

EXHIBIT 8.

Defendant's Exhibit "8" is a label used as a flap cover for cigar boxes, on which is printed in Spanish:

"Carefully made from the best Isabela leaf".

98 EXHIBIT 9.

Defendant's Exhibit "9" is a label used on the boxes containing defendant's "Imperial" brand of cigarettes, which bears the words:

"Choisest cigarettes made exclusively from the very best assorted "leaves of the best districts of Ysabela Province."

EXHIBIT 10.

Defendant's Exhibit "10" is a catalogue iss-ed in July, 1916, by Walter E. Olsen & Company, Manila cigar dealers, which contains advertisements of their "Jose Rizal" cigars, which are described as being made

"From the most carefully selected leaf grown in the rich fields "of Isabela Province".

It also contains an advertisement of the "Primera Hebra" cigarettes manufactured by the Yebana Cigar and Cigarette Factory in the City of Manila, which are described as being made of

"a superior blend of the finest selected matured Isabela tobacco "grown on the company's own plantations in Isabela Province".

It also contains an advertisement of defendant's "Alhambra Imperial" cigarettes, which are described as follows:

"Made by hand from the choisest Isabela leaf from which all "stems and veins have been carefully removed leaving only the heart "of the leaf."

EXHIBIT 11.

Defendant's Exhibit 11 is an illustrated advertising pamphlet issued by defendant in 1912, which contains a statement that the cigars and cigarettes made by defendant in the Alhambra factory are made of tobacco selected by buyers sent by plaintiff to visit "various plantations in the Cagayan Valley of northern Luzon, where the choisest Isabela tobacco is grown".

99 EXHIBIT 12.

Defendant's Exhibit "12" is a pricelist of cigars and cigarettes issued by "La Insular" factory in Manila, which contains a statement that the factory has

"large stocks of leaf tobacco from Isabela and Cagayan, which is the "best guarantee of the quality of its products".

EXHIBIT 13.

Defendant's Exhibit "13" is an advertising card on which it is stated that the cigars made by defendant are

"of the very highest grade of picked Isabela tobacco".

EXHIBIT 14.

Defendant's Exhibit 14 is a pricelist issued in July, 1913, b
Walter E. Olsen & Company, Manila cigar dealers, which contain
an advertisement of the cigars made by the Insular factory in Manil
which are described as being made from

" the choisest quality of Isabela tobacco".

It also contains an advertisement of the cigars made in defendant
Alhambra Cigar & Cigarette Factory, which are described as

" made from Isabela leaf, filler and wrapper".

It also contains six pages of illustrated advertisements of the ciga
made by plaintiff corporation in its Manila factory, on each page
which the words "La Flor de la Isabela" are used to designate plai
tiff's products, the same words appearing on the photograph repr
ductions of the rings used on plaintiff's cigars and on the boxes co
taining them.

100 EXHIBIT 15.

Defendant's Exhibit "15" is a copy of the Trade Journal entitle
"The Tobacco Leaf", issued in New York under date of April 2
1914, which contains a reprint from a Manila paper on the subje
of the United States market for Manila cigars in which it is said,
ferring to the Manila cigar factories:

"La Insular, La Flor de la Isabela, La Yebana, Alhambra an
" Helios are satisfied with their present business".

EXHIBIT 17.

Defendant's Exhibit 17 is a copy of a certificate issued on June 2
1914, by the officer in charge of the Division of Archives, Patent
Copyrights and Trademarks of the Executive Bureau of the Philip
pine Government, of the deposit by defendant corporation on May 2
1914, for registration, of facsimiles of a certain trademark for ciga
ettes, to which is attached an affidavit in the following words an
figures:

"To all whom it may concern: Be it known that the Alhambr
" Cigar & Cigarette Manufacturing Company, a corporation dul
" organized under the laws of the Philippine Islands, with its prin
" cipal office in the City of Manila, and doing business in the Cit
" of Manila, has adopted for its use a trade-mark for manufacture
" of tobacco of which the following is a description:

"As shown in the accompanying facsimile, the trade-mark consis
" of two gilt and one dark blue band impressed upon paper the whol
" forming a rectangle: upon the upper gilt band appears a crow
" and shield and in dark blue letters the words: "Alhambra, S

"Cigarrillos de Calidad Superior—Hechos Puramente Con Hojas "Escogidas de la Ysabela; and on the middle dark blue band appear "in gilt letters the words: "Ysabelas—Garantizadas por Alhambra Cigar & Cigarette Mfg. Co., Manila,—A-4-5.

101 "The applicant desires to begin the use of said trademark "immediately.

"The class of merchandise to which the trademark is appropriated "is manufactures of tobacco, and the particular description of the "goods comprised in said class on which said trade-mark is used is "cigarettes.

"The trade-mark is to be applied as a wrapper for packages of "cigarettes. Alhambra Cigar & Cigarette Mfg. Co., By (Sgd.) "P. A. Meyer, President. Witnesses: (Sgd.) F. A. Cruz ——, Cris-"tino Arriola."

"United States of America, Philippine Islands, City of Manila, *ss.* "P. A. Meyer, being duly sworn deposes and says: That he is the "President of the corporation the Alhambra Cigar & Cigarette Manu-"facturing Company, the applicant named in the foregoing state-"ment; that he verily believes that the foregoing statement is true; "that the said firm at this time has a right to the use of the trade-"mark therein described; that no other person, firm or corporation "has the right to such use, either in the identical form or in any "such near resemblance thereto as might be calculated to deceive; "that the trade-mark is used by the said company in domestic and "foreign commerce and particularly with Europe and America and "that the description and facsimiles presented for record truly rep-"resent the trademark sought to be registered. (Sgd.) P. A. Meyer. "Subscribed and sworn to before me, this 19th day of May, 1914. "Affiant exhibited his cedula No. F 9410, issued at Manila, Jan. "20th, 1914. (Sgd.) W. L. Wright, Notary Public. My Commis-"sion expires December 31, 1914. No. 66. Page 91. Book 1."

It is hereby stipulated and agreed by and between the parties, plaintiff and defendant, to the above entitled cause, that the foregoing translation and synopsis of the exhibits introduced by the respective parties litigant is correct and may be incorporated into the record of the proceedings for transmission to the Supreme Court of the United States for the purposes of the appeal to said court taken on behalf of plaintiff, with the same purpose and effect as though

102 the full text of the said exhibits had been set forth; it being further stipulated that the omitted portions of the said exhibits are unimportant and that the exhibits were introduced for the purpose of drawing to the attention of the Court the portions thereof set forth in the preceding synopsis; that the omission of the full text of said exhibits is agreed to for the purpose of preventing the record from being unnecessarily cumbersome.

Manila, P. I., February 9, 1917.

ROHDE & WRIGHT,
pp. WM. J. ROHDE,
Attorneys for Alhambra Cigar & Cigarette Mfg. Co.
COHN & FISHER,
pp. F. C. FISHER,
Attorneys for Compañia General de Tabacos de Filipinas.

103 That said Court, on the 24th day of August, 1914, rendered its decision thereon, in the following terms:

Decision.

This is a petition for an injunction restraining defendant from employing or making use of the word "Isabelas" as a distinctive brand or name for cigarettes or other manufactures of tobacco manufactured or offered for sale by said defendant. The petition also asks for an accounting of all profits realized by the defendant from the sale of cigarettes under the name and style of "Isabelas." Petitioner alleges both unfair competition and infringement of trade-name. Defendant's answer admits that both plaintiff and defendant are duly organized corporations authorized to transact business in the Philippine Islands, and denies all the other allegations of the petition.

There is very little dispute as to the facts. It is fully established by the evidence that the plaintiff has for many years operated a tobacco factory known as "La Flor de la Isabela"; that this name has generally appeared on the packages and labels used by the plaintiff for the marketing of its manufactured tobacco products; that on the 5th day of April, 1887, the Spanish Government conferred upon the plaintiff the exclusive ownership of various trade-marks containing in conspicuous letters the phrase "La Flor de la Isabela"; that this phrase was adopted because the plaintiff in the manufacture of cigars and cigarettes originally used tobacco leaf from the Province of Isabela; that for some ten years or more last past the plaintiff has manufactured a brand of cigarettes called "Isabela", known generally to the trade as "Isabela Cortos", "Isabela Entrelargos" and "Isabela Largos" according to size; that sometimes these cigarettes are called "Isabelas" only; that the tobacco products of the plaintiff are generally known in the United States under the name "Isabela"; that about June 15th of this year the defendant began to manufac-

104 ture and offer for sale a cigarette styled "Isabelas", the labels of the packages in addition to that name also containing the name "Alhambra" in large type; and that there is otherwise no misleading resemblance of the packages and labels to those of the plaintiff.

We doubt that the facts established, under the circumstances of the case, justify the inference of actual intent on defendant's part to deceive the public and defraud a competition and can, therefore, not find the defendant guilty of unfair competition; the case is rather one of the violation of trade-mark under the first four sections of Act No. 666. Section 1 of the Act reads:

"A trade-mark is a name, emblem, sign, or device employed by any person, firm, or corporation to designate the goods dealt in or manufactured by such person, firm, or corporation, for the purpose of enabling the public to recognize such goods and manufactures, and to distinguish them from the goods and manufactures of others."

Section 4 of the Act provides that in order to justify recovery for its infringement registration of the trade-mark need not be shown:

"It shall be sufficient to invoke protection of his property in a trade-mark if the party complaining shall prove that he has used the trade-mark claimed by him upon his goods a sufficient length of time so that the use of the trade-mark by another would be an injury to him and calculated to deceive the public into the belief that the goods of that other were the goods manufactured or dealt in by the complaining party."

That a certain grade of cigarettes manufactured by the plaintiff has for a number of years been generally known under the name of "Isabela" cannot, under the evidence, be doubted; it is equally well established that in some parts of the world the output of the plaintiff's tobacco factory is known by the same name; it is a fair
105 conclusion that the use of the name for their products by other tobacco factories would be calculated to deceive the public. But the defendant argues that "Isabela" is the name of a province and that under the proviso in section 2 of the Act mentioned geographical names cannot be exclusively appropriated. The proviso reads as follows:

"Provided. That a designation or part of a designation which relates only to the name, quality, or description of the merchandise or geographical place of its production or origin cannot be the subject of a trade-mark."

We do not think that in the present case the name "Isabela" as applied to plaintiff's cigarettes in reality has much to do with the "name, quality, or description" of the cigarette so named or with the place of its production; it is manufactured in Manila and is admittedly made of tobacco other than that from Isabela Province. The name was probably originally only an abbreviation of the phrase "La Flor de la Isabela", which in turn owed its origin to the fact that the plaintiff used tobacco leaf from the Province of Isabela (see testimony of witness Malvehy), but it is evident that in speaking of "Isabela Cortos" or "Isabela Largos" direct reference is not had to the Province of Isabela. It is therefore clear that through usage the name "Isabela" in connection with cigarettes has acquired a special signification and cannot in this sense be regarded as a geographical name. The doctrine of secondary meaning in regard to trade-names is too well established to call for further discussion.

The injunction issuing in this case should, in the opinion of the Court, be limited to cigarettes; it does not appear that the defendant threatens to use the name Isabela to designate its other products.

Wherefore, the defendant, the Alhambra Cigar & Cigarette Manufacturing Company, its officers, agents, attorneys, employees, or other representatives are hereby perpetually prohibited from em-
106 ploying or making use of the word "Isabelas" or any equivalent thereof, or of any other word or name confusingly similar thereto as a distinguishing brand or name for cigarettes manufactured by said defendant.

It is further ordered that the said defendant within the period of thirty days from the date upon which this decision become final render an account to the plaintiff of all profits realized from the sale of cigarettes manufactured by said defendant and marketed under

the name and style of "Isabelas" and that said defendant pay the plaintiff a sum equal to the amount of such profits, together with the costs of this action.

It is so ordered.

Manila, P. I., August 24, 1914.

(Sgd.) JAMES A. OSTRAND, *Judge.*

That immediately upon notice of said decision the defendant excepted to the findings and conclusions thereof, and on the 26th day of August, 1914, filed its motion for a new trial, as follows:

Motion for New Trial.

Comes now the defendant and moves the Court to set aside the judgment rendered herein and to grant a new trial of the above entitled cause upon the following grounds:

1. That the findings of fact are plainly and manifestly contrary to the weight of evidence;
2. That the evidence introduced is insufficient to justify the decision;
3. That the decision made upon the findings is contrary to law.

(Sgd.) ROHDE & WRIGHT,
Attorneys for Defendant,
By W. L. WRIGHT.

107 which motion being heard on August 29th, 1914, was thereafter on the 3rd day of September, 1914, overruled by the Court in an order as follows:

Order Denying Motion for New Trial.

After due hearing and upon careful consideration the defendant's motion for new trial is hereby denied.

It is so ordered.

September 3, 1914.

(Sgd.) JAMES A. OSTRAND, *Judge.*

That defendant duly excepted to the said order overruling its said motion for a new trial and gave notice of its intent to present for allowance a Bill of Exceptions and to appeal to the Supreme Court.

That on the 10th day of February A. D. 1916, the Supreme Court of the Philippine Islands, rendered its decision in the terms following.

(Title, Court and Cause.)

MORELAND, *J.:*

The plaintiff claims to have appropriated and to own the exclusive right to use the word "Isabela" on cigarettes.

Some time before the commencement of this action defendant began the manufacture of cigarettes, offering them to the public in packages on the front side of each of which appeared the words "Alhambra Isabelas." This action was brought to enjoin the defendant from so using the word "Isabelas". Judgment was for plaintiff and defendant appealed.

The complaint contains two counts, one for the violation or infringement of the trade name "Isabela", and the other, claims
108 the plaintiff, for unfair competition arising out of the use by the defendant of the word "Isabelas" on its cigarettes in the manner already stated. The trial court dismissed the count based on unfair competition, saying, "We doubt that the facts established, under the circumstances of the case, justify the inference of actual intention on defendant's part to deceive the public and de-
109 fraud a competitor, and can, therefore, not find the defendant guilty of unfair competition." Although neither count in the complaint was based on the infringement or violation of a trademark, and plaintiff, during the trial, offered no evidence on that subject, and, accordingly, no issue was framed thereon either by the pleadings or on the trial (Lizarrga Hermanos vs. Yap Tico, 24 Phil. Rep. 504), nevertheless, the court in its decision for plaintiff, treated the action as one for the infringement of a trademark, saying, "the case is rather one of the violation of a trademark under the first four sections of Act No. 566." The court then cites those sections of the act relative to trademarks, discussed them at some length, and finally founded judgment thereon.

Plaintiff did not appeal from that portion of the judgment finding the defendant not guilty of unfair competition; while the defendant appealed from that part founded on the violation of a trademark and decreeing a perpetual injunction. Therefore, the question involving unfair competition is not really before us, that count of the complaint founded thereon having been, in effect, dismissed by the trial court and no appeal having been taken from that dismissal. While the court founded its judgment solely on the theory of a violation of a trademark and, although the defendant insisted from the very beginning that the action as set out in the complaint in no possible way involved the question of a trademark, nevertheless, the court, as we have already seen, proceeded to try and resolve the case on that theory and based its judgment exclusively thereon. Defendant now contends that, if it appears that the action was not for a violation of a trademark, the judgment should be reversed, as it was wholly misled in its defense and would be seriously prejudiced
110 by the change necessarily resulting. We regard the action, however, as we necessarily must under the statute, as one for the violation of a trade name and not one for the violation of a trademark or for unfair competition. But, inasmuch as we find for the defendant on the whole case and reverse the judgment against it, we do not stop to dispose of the question as to whether the theory of the action was changed during or after trial or on appeal so long as the parties have agreed on certain questions which they have submitted and discussed, which questions include all those which can arise

whether the action be for the violation of a tradename or for unfair competition. We prefer to decide the case so as to end the litigation once for all.

Inasmuch as the plaintiff did not appeal from the judgment dismissing the complaint as to unfair competition, we would be justified in holding that that question is not before us and, accordingly, in deciding the case from the single viewpoint of a violation of a trade name. But for the reasons just expressed, we take up both alleged causes of action and decide all the questions presented by both.

Plaintiff's claim is this: It has trade name rights in the word "Isabela". The defendant has violated those rights. Plaintiff is entitled to damages on the theory of violation of a trade name, or unfair competition, or both. Can it recover? We hold that none of these claims have been sustained and that plaintiff is not entitled to recover on any theory mentioned. We proceed to show why.

Rights of action for the violation of a trademark or trade name or to restrain unfair competition are conferred by statute. Without such a statute right of action would not exist in those cases.
111 In deciding this appeal, therefore, we must be governed by the provisions of the statute.

The act is No. 666 of the Philippine Commission and confers a right of action in three cases,—for the violation of a trademark, a trade name, and to restrain unfair competition. The statute founds the cause of action in the first two cases exclusively on the invasion of the right of property which the statute gives in the trademark or trade name. These actions are not based on fraud nor is the right given on the theory of unfair competition. It is founded solely in the property which the statute creates in the trademark or trade name. These two cases are dealt with somewhat on the theory of patents, giving the owner of the trademark or trade name a right in the thing similar to the right created by a patent. As a necessary consequence, an action for a violation or infringement of a trademark or trade name does not proceed primarily on the theory that either the plaintiff or the public has been or will be defrauded, although that may be, in effect, the result; but on the hypothesis that plaintiff's right in the mark or the name has been invaded and that he is entitled to the damages resulting from the invasion. In either case an action may be maintained without proof of anything more than the right to the exclusive use of the mark or name and that the defendant has violated it. No allegation or proof of fraud or intent to defraud is necessary. On the other hand, the action to prevent unfair competition is based exclusively on fraud; and it would seem from the wording of the statute that it refers to the fraud committed on the public rather than to the fraud committed on the plaintiff,—the fraud against the plaintiff being only an incident,—the means by which the fraud is perpetrated on the public. No right of property in the appearance which plaintiff gives to his
112 goods is required, if the word property may be used in such a connection, and none needs to be alleged or proved. In such an action plaintiff, to recover, must prove that the defendant, in selling his goods, gave them the same general appearance of the goods

of the plaintiff either in the wrapping of the package in which they were contained or in the devices of words thereon or in some other feature of their appearance which would be likely to influence purchasers to believe that the goods offered for sale by defendant were those of the plaintiff; and that the defendant clothed his goods with such appearance for the purpose of deceiving the public and of defrauding the plaintiff of his legitimate trade. The statute expressly requires that the plaintiff prove the intent to deceive the public and defraud a competitor before he can recover; and, while such intent may be inferred from the similarity in the appearance of the goods as packed or offered for sale, such an inference is not a necessary one, it being legally possible that such similarity exist and there still be no intent to deceive. Fraud, then, is the essence of an action of unfair competition; right in property the essence of the other two.

From these observations it is a necessary deduction that an action for the violation of a trade name cannot be carried on in conjunction with an action of unfair competition based on a similarity to the plaintiff's trade name. If an action on the trade name will lie, then an action of unfair competition based on similarity to the trade name is impossible; whereas, on the other hand, if an action of unfair competition is the proper action, then one for the violation of a trade name based on the same facts will not lie. The facts which will support an action for the violation of a trade name will
113 not support an action of unfair competition. The same is true of an action for the violation of a trademark except where such an action fails for the reason that the trademark is invalid because it consists of a word or words which, in law, is not capable of appropriation as a trademark. In such case, by express provision of the statute (Section 7), an action of unfair competition will lie. No such exception is made in favor of a trade name; and if the plaintiff fails to establish his right of property therein, his failure is irremediable. He cannot fall back on the action of unfair competition. We apprehend that the reason why this privilege was not extended to a plaintiff in an action for the violation of a trade name was that an action of unfair competition is based exclusively on the appearance of the goods as they are exposed for sale; while, under the statute, the trade name, unlike the trademark, applies exclusively to the business, profession, trade or occupation of the plaintiff and, as a consequence, it is not essential that the trade name appear on plaintiff's goods or go into the market with them. (Section 5.) It is clear that, if the action of unfair competition is based on the appearance of the goods as they are exposed for sale, the facts necessary to support an action for the violation of a trade name will not sustain it, as neither the trade name of the plaintiff nor of the defendant need go into the market at all, and, as a consequence, the similarity of appearance between the goods of plaintiff and defendant, a fact necessary to sustain an action of unfair competition, may not exist.

Another principle of the law of trademarks, trade names and unfair competition of importance in this case, and one which naturally

follows from what has already been said, is that there can
114 be secondary meaning, as that term is understood in the American Law of trademarks and trade names, with respect to a trade name. It must be borne in mind, as we stated at the outset, that the only rights existing in this jurisdiction with respect to trademarks and trade names, as well as unfair competition, are conferred by Act 666; and, accordingly, they are limited by the provisions of the act. The statute prohibits the registration of a trade name when that trade name represents the geographical place of production or origin of the products or goods to which the trade name refers, or when it is merely the name, quality, or description of the merchandise with respect to which the trade name is to be used. In such cases, therefore, no trade name can exist. The statute prescribes what a trade name may be and then gives a right of action to protect the owner of that trade name. If it is not a trade name defined by statute, it does not carry with it the right of action granted by the statute. No trade name can legally exist except that legally prescribed by the act. If it can exist, it can be enforced as, and only as the rights in trade names are enforced under the statute. If it cannot exist as a trade name, it cannot be enforced at all, either as a trade name, i. e., as a property right, or on the theory of unfair competition based on the doctrine of secondary meaning. Of course, if the trade name is not recognized in law, it can have no secondary meaning. Moreover, the doctrine of secondary meaning as it is known in the United States, is carried into effect on the theory of unfair competition and not on the theory of property in the trade name. Indeed, the necessity of basing the action on the theory of unfair competition negatives the existence at that time of the trade name in its primary meaning. In this jurisdiction that necessity is em-
115 phasized by the fact that, as we have seen, the statute makes a sharp distinction between actions for the violation of a trademark or trade name and those based on unfair competition, the former being founded in a property right and the latter on the fact that fraud has been or will be committed on the public. Furthermore, if the action of unfair competition based on the similarity of plaintiff's and defendant's trade names cannot be maintained in this jurisdiction, as we have seen that it cannot, then the fundamental basis of the doctrine of secondary meaning disappears. We might add that the statute does not seem to have dealt with trade names as it has with trademarks; for, with respect to the latter, it expressly confers, as we have seen (section 7), a right of action for unfair competition even though the trademark, as such, is illegal and unregisterable by reason of being the name of the geographical place of production or origin of the goods to which it is affixed, or the name, quality or description of the merchandise on which it is placed. In other words, the statute seems to create with regard to a trademark a right which is, in many aspects, the equivalent of that springing from the doctrine of secondary meaning, and where the trademarks, though illegal and unregisterable under the act, has been used by the plaintiff for such a length of time that it has ceased to be used and understood in its primary meaning, the owner will be

protected on the theory of unfair competition. The statute does not confer a right on the owner of a tradename under similar circumstances.

The trial court was, therefore, correct in dismissing that count of the complaint based on unfair competition. The statute, as we have already observed, does not permit these two actions to be maintained on the same facts. We might say, however, that the ownership of a trade name does not necessarily prevent the owner from bringing an action of unfair competition founded on the appearance of the
116 goods of defendant as exposed for sale, which appearance is not based on similarity to the owner's trade name. Such an action would have to be based on the general appearance of the package, its form, color, style, adornment, and matters of that character; and would not lie on appearance arising from the similarity of plaintiff's and defendant's trade names.

The effect of these observations and conclusions would necessarily be to end the case at this point if we were disposed to leave the other questions presented for resolution unsettled; for, if there can attach to a trade name no secondary meaning, plaintiff's action must fail. It is based exclusively on the secondary signification of the word "Isabela" which it has acquired by long association with plaintiff's cigarettes, by virtue of which it no longer means to the trade and the public generally when used in connection with tobacco products, a province of Luzon or the tobacco grown in that province, but simply and solely the products of plaintiff's factory. In other words, the claim is that it has completely lost its primary signification and come to have a secondary meaning exclusively when used in connection with manufactured tobacco. The action being based entirely on the theory of secondary meaning, and the statute giving no right of action in cases of that character, it is evident that the action cannot be maintained.

In spite of the fact, however, that we might *here* reversed the judgment on the grounds already stated we prefer, in the
117 interests of the parties, the bar and the public generally, to decide the other questions presented, some of them being extremely important and of public interest and they having been fully argued on the appeal. (Lichauco vs. Limjuco, 19 Phil. Rep. 12.)

It is admitted all through this case, in fact it is alleged in plaintiff's complaint and is set out in all parts of its brief filed on this appeal, that plaintiff's trade name, as evidenced by the certificate issued under the Spanish Regime, consists solely of the words "La Flor de la Isabela." Plaintiff does not claim that the word "Isabela" has been registered by it as a trade name or that it has a title from any source conferring on it the exclusive right to use that word. The certificate offered in evidence by plaintiff to show its right to the exclusive use of the phrase "La Flor de la Isabela" grants two rights: One in a trademark consisting of a rectangular shield, surmounted by a crown and divided into four equal parts, in the right hand upper corner of which is a full rigged sailing ship at sea, in the left hand upper corner a growing tobacco plant, in the lower right hand corner a field of sugar cane with a pool of water in the foreground, and in

the lower left hand corner a factory in operation; the other, a right in the trade name "La Flor de la Isabela." As we have already seen, there is no claim here based on the infringement or violation of the trademark just described, nor is there contention or
118 claim of any kind that the use of the word "Isabela" is a violation or an infringement of the trade name "La Flor de la Isabela." The action is not for the violation of the trade name "La Flor de la Isabela," but for the violation of an entirely different trade name, namely, "Isabela." The exclusive right to use this name, plaintiff claims arises from two causes: First. The contraction of the phrase "La Flor de la Isabela" into the word "Isabela" by popular expression and use; and, second, the use for more than 20 years of the word "Isabela." In view of the fact that there is no claim of an infringement of the trade name "La Flor de la Isabela," these two claims are identical; for, there could have been no contraction brought about by popular expression except after long lapse of time. The contraction of the phrase into the word create no rights there being no registration unless it resulted from long use. Therefore, to establish a right in the word, the contraction must be shown to have existed for a length of time equivalent to that which would be necessary to give the word "Isabela" the dignity and legal status of a trade name. If, therefore, it results from the evidence in this action that the word "Isabela" has not been used by the plaintiff for a period of time sufficient to give it the special value necessary to bring it within the law relating to trade names, (if it be admitted for the
119 moment that that could be done) then the plaintiff must fail, whether it base its action on contraction, or use, or both.

There is another ground on which plaintiff would fail in his action. If it should appear in the case that the word "Isabela" was a word which, at the time of its adoption by plaintiff and at all times since, was the name of the geographical place of production or origin or was ordinarily and generally used as the name, quality or description of the merchandise to which it related, plaintiff would fail, as such name would not be capable of being registered as a trade name (section- 2 and 13) and could not, for that reason, be appropriated by plaintiff as such. That being so, no action for a violation thereof could be maintained, as none is granted by the statute in such case. (Sections 3, 5 and 7.)

Before entering on the discussion of the facts of the case, it may be well to set down certain things that appear to be uncontroverted:

1. There is a province in the Island of Luzon known as Isabela Province. In that province grows tobacco of a class and quality not grown in any other province or place in the Philippine Islands.

2. That tobacco is known commercially and to the trade as Isabela tobacco and the expression "Isabela tobacco" has in the Phil-
120 ippine Islands a meaning as definite, certain and clear as the expression "Havana tobacco" or "Virginia tobacco" in the United States.

3. The defendant has used on its cigarettes the words "Alhambra Isabelas" with a statement that the cigarettes inclosed in the package are composed exclusively of Isabela tobacco. Aside from "Isabela"

no other word or phrase or character is used on defendant's packages which it is claimed is in violation of plaintiff's rights.

4. There is absolutely no resemblance between the packages of cigarettes manufactured and sold by the plaintiff and those manufactured and sold by the defendant, except in the word "Isabelas."

5. The phrase "La Flor de la Isabela" means in English, giving it a free translation, "The best tobacco grown in Isabela Province," or "The finest tobacco grown in Isabela Province," or "The finest quality of tobacco grown in Isabela Province." The phrase, in its primary sense, conveys the idea that the products on which it is placed are composed of the best tobacco grown in the Province of Isabela.

6. Plaintiff's cigarettes marked with the design "La Flor de la Isabela," and referred to in this case, are not manufactured or composed, either wholly or in part, of tobacco grown in Isabela Province.

121 7. The cigarettes manufactured and sold by defendant as "Alhambra Isabelas" are composed exclusively of tobacco grown in Isabela Province.

8. The word "Isabela," when used in connection with tobacco, cigars or cigarettes, signifies in its primary sense that the tobacco itself, or that composing the cigars or cigarettes, is Isabela tobacco.

We are of the opinion that the plaintiff must fail in this action for the reason that, in the first place, it has not proved that the word "Isabela" has been used in the manner and form alleged in the complaint; and, in the second place, for the reason that it is the name of the geographical place of production or origin of the material composing the article to which it is affixed and that it is the name, quality and description thereof. The burden is on plaintiff to prove the use of the word "Isabela" for such a length of time and under such circumstances as to give it the right to its exclusive use. Reviewing the evidence of record, we are of the opinion that the overwhelming weight thereof is contrary to plaintiff's contention. It shows that in not a single instance in the history of the plaintiff corporation, so far as is disclosed by the record, has a package of its cigarettes gone into the market, either at wholesale or retail, with the word "Isabela" alone on the package as a separate or distinct word or name. In every instance, so far as the documentary

122 evidence goes, the packages have been marked by the phrase "La Flor de la Isabela." There is not an exhibit of any probative value on the issues involved which does not tend affirmatively to establish that the word was never used as a separated and distinct word and to negative any intention on the part of the plaintiff to use it as such. As far back as the time when the plaintiff obtained the right to use the trade name "La Flor de la Isabela" the exhibits filed in its application for registration of that trade name demonstrate, as they naturally must, that the trade name which plaintiff desired to secure was "La Flor de la Isabela" and not "Isabela". These exhibits are the wrappers which inclose plaintiff's cigarettes as they are found exposed for sale and have on them the words, designs and devices to the exclusive use of which plaintiff claims to be entitled. Every one of them contains the phrase "La

Flor de la Isabela" and not one of them the word "Isabela". In all of them the word "Flor" is almost equally conspicuous with the word "Isabela" and from them we can see no intent to emphasize the word "Isabela" more than the word "Flor." So far as the record shows, plaintiff nowhere advertised or advertises its cigarettes as "Isabela" cigarettes and we find nothing in the exhibit which shows that the plaintiff has or ever had the slightest intention to use the word "Isabela" as a trade name.

123 Much stress is laid by plaintiff on the fact that the wholesale packages of cigarettes, that is, the packages containing a number of the small retail packages, have printed on the two edges in large letters "Isabela Cortos," "Isabela Largos," and "Isabela Entrelargos," as the case may be. But it is to be noted that it appears from the exhibits themselves that plaintiff's trade name "La Flor de la Isabela," in conspicuous letters, is also attached to both ends of each of such packages; and each of the small packages inclosed in the larger carries the phrase "La Flor de la Isabela" and not the word "Isabela". It remains true, therefore, as we said at the outset, that not a single package of plaintiff's cigarettes has ever gone into the market in the Philippine Islands with the word "Isabela" alone thereon as a trade name.

Much importance is attached by plaintiff to a letter dated April 8, 1914, received from one of its employees in America. While this letter is of doubtful competency as evidence for plaintiff, it is in the record, and inasmuch as so much stress is laid on a portion of it, and it appears to be competent evidence as against plaintiff, we refer to it. The sentence in the letter to which reference is particularly made is this: "Furthermore, the trade here knows the cigars as 'Isabela' pure and simple." As is seen, this letter refers to cigars and not cigarettes; but, be that as it may, we believe that the plaintiff has quite overlooked the real nature of the latter as evidence. In its attempt to demonstrate that its tobacco products are known in America as "Isabela" products, it overlooked the first part

124 of the letter which, to us, is the most significant part of it. The writer says:

"Ehrman Bros. & Co. have asked us to have the paster 'La Flor de la Isabela,' which goes on the end of the boxes, as per sample we enclose herewith, changed as follows:—Make the strip about half as wide again as the enclosed sample, and istead of the words 'La Flor de la Isabela,' put on just the one word 'Isabela' in large letters. Ehrman Bros. say their customers claim that the lettering on this strip is too small for the customers to notice it readily behind the counter, whereas a large lettering of the word 'Isabela' will be much more attractive and more noticeable."

This portion of the latter demonstrate- conclusively that the plaintiff has never advertised its cigars in America as "Isabela" cigars. It has persisted always in advertising them as "La Flor de la Isabela;" and the precise objection made by the dealers handling plaintiff's cigars in the United States is that plaintiff insists on advertising its goods as "La Flor de la Isabela" instead of "Isabela;" and it is clear from the letter that if, as the writer says, its cigars are known

to the trade in America as "Isabela" cigars, it is not by reason of plaintiff's effort but in spite of them. Plaintiff itself has put forth no effort, as far as we can see from the record, to create a right in the word "Isabela." All of its money has been spent and all of its energy used in the advertisement of the phrase "La Flor de la Isabela."

A price list of the products of the plaintiff company has
125 been introduced in evidence, on the 10th and 11th pages of which appear the words "Isabela Cortos", "Isabela Largos" and "Isabela Entrelargos," together with the price. We do not regard this price list as indicating anything more than the fact that the limited space, the price list is printed in very small letters, forbade the use of the phrase "La Flor de la Isabela." But we note that, in extremely large letters, comparatively speaking, on the front page of the price list, are found the words "La Flor de la Isabela," while on each package of cigarettes which, in the price list, are called "Isabela Cortos," "Isabela Largos" and "Isabela Entrelargos," is found, in more than one place, the phrase "La Flor de la Isabela." Moreover, under the word "remarks" found at the close of the price list, are these words: "When the Spanish Government abolished the tobacco monopoly in the Philippine Islands this company acquired the exclusive right to use the marks 'Cavite,' 'Malabon,' 'Princesa,' and 'Meisic' which were formerly the property of the Government." Nothing is said about the word "Isabela." No rights are claimed by that advertisement in that name.

The documentary evidence introduced by plaintiff is fully corroborated by the evidence of defendant. The testimony of Mr. Olsen, one of the leading tobacco manufacturers of the Philippine Islands, is to the effect that the products of plaintiff's factory are generally known in the Philippine Islands as Tabacalera products, sometimes as "La Flor de la Isabela" products, but not as "Isabela" products. He states that the cigarettes which plaintiff calls "Isabela Cortos" and "Isabela Largos" are generally known to the trade as "Tabacalera Cortos" and "Tabacalera Largos." The clerk of the court of first instance in which the action was tried, being called as a witness for the defendant, testified that he smoked cigarettes of the Tabaca-
126 lera and Insular factories and that he had never heard of "Isabela" cigarettes before the defendant began the manufacture of its cigarettes; but that he had frequently heard of the factory "La Flor de la Isabela." Mr. Blanco, the interpreter of the court, testified that he had smoked cigarettes for 40 or 50 years and that he had not heard of "Isabela" cigarettes.

While some of the witnesses for the plaintiff testified that the public knew the products of plaintiff's factory as "Isabela" products, that testimony was in part contradicted by other witnesses for the plaintiff and is entirely at variance with its documentary evidence.

It appearing from the record in the case that the plaintiff has always insisted on the ownership of the trade name "La Flor de la Isabela" and has invariably sent it into the market with its products both in the Philippine Islands and in the United States, and that whatever effort and money plaintiff has expended in securing a trade name have been spent with respect to "La Flor de la Isabela" and not

"Isabela," we are driven to the conclusion that, as a matter of fact, the word "Isabela" has never been used by the plaintiff as a trade name in such a way as to give it any exclusive right therein. Moreover, the persistent use of the trade name "La Flor de la Isabela" denies the possibility of any single word in that phrase being a trade name. It being kept in mind that there is no contention on the part of the plaintiff that the use of the word "Isabela" by the defendant is an infringement of the trade name "La Flor de la Isabela" has given the plaintiff no right to the use of the word "Isabela." Furthermore, plaintiff denies that it has abandoned the trade name "La Flor de la Isabela," but maintains that its rights therein are
127 now in full force and effect. Admitting, even for the sake of argument, that there can exist a trade name without registration under the statute, it is well known that the plaintiff is not entitled to the exclusive right to use such a trade name unless it has used it for a sufficient length of time to give it a special value. But plaintiff's effort has been directed exclusively to the trade name "La Flor de la Isabela," and this fact necessarily negatives any claim that the word "Isabela" has, by plaintiff's effort, received any special value in connection with plaintiff's products.

We might say, in concluding this branch of the subject, that, even admitting that the word "Isabela" may have been appropriable by plaintiff as a trade name at the time it began to use it, the evidence showing that it had been exclusively appropriated by the plaintiff would have to be very strong to establish the fact of appropriation and the right of exclusive use. The law as it now stands and has stood since the Royal Decree of 1888 prohibits the use of a geographical name as a trade name. Act 666 prohibits the use not only of a geographical name but also of a word which is either the name, quality, or the description of the article to which the trade name refers. Even if appropriation were possible, it would require the clearest of proof to permit the appropriation of a word as a trade name the use of which in that connection the law expressly declines to sanction.

Furthermore, we are of the opinion, that even if plaintiff had proved a right to the exclusive use of the word "Isabela," we would be forced to conclude that its use by the defendant in connection with the word "Alhambra," which is made equally conspicuous with the word "Isabela," would be a sufficient effort on the part of defendant to distinguish its cigarettes from those of plaintiff; particu-
128 larly in view of the fact that the word "Isabela" is the name of a province and also the commercial name of the tobacco grown in that province.

We do not believe, however, that the word "Isabela" can be appropriated or could be appropriated at the time plaintiff claimed that it began to use that word as descriptive of its products. The Royal Decree of 1888 prohibited the use of a geographical name as a trade name or trademark and that decree was in force before the use of the word "Isabela" began, even under plaintiff's claim. At least it had not been used for a sufficient length of time to give it a property right therein, it never having been registered as a trade name either

under that decree or Act 666. From the date of that decree to the present time it has been unlawful to select the word "Isabela" as a trade name, and it would have been impossible during that time for the plaintiff to have obtained a right therein, no matter how much the word might have been used or to what extent it had been advertised. While Act No. 666, as we have seen, expressly permits the appropriation of a trademark, although it may be a geographical or descriptive name, it does not permit the appropriation of a trade name under the same circumstances. We accordingly repeat, from the Royal Decree of 1888 to the present time, the word "Isabela" has not been appropriable by anybody as a trade name.

For these reasons and for the further reason that we regard the case of Baxter vs. Zuazua, 5 Phil. Rep. 160, as decisive of the main questions involved in this case, we are of the opinion that the judgment must be reversed.

The judgment appealed from is reversed and the perpetual injunction issued thereon is dissolved. Without costs in this
129 instance. After the expiration of 20 days let judgment be entered in accordance herewith, and 10 days thereafter let the case be returned to the court whence it came for execution.

So ordered.

Arellano, C. J., and Torres, J., concur.

Carson, and Trent, JJ., concur in the result.

Johnson, J., dissents.

Judgment reversed.

Injunction dissolved.

130 That thereafter, to-wit: on the 22nd day of January, A. D. 1917, the plaintiff and appellant presented the following petition for appeal and assignment of errors, to-wit:

Title Court & Cause.

Petition for Appeal.

The plaintiff, Compañia General de Tabacos de Filipinas, conceiving itself aggrieved by the judgment made and entered on the 10th day of February, 1916, in the above entitled case, does hereby appeal from the said judgment to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the Supreme Court of the United States.

The above entitled action is one in which is involved the treaty of the United States with the Kingdom of Spain, executed at Paris on the tenth day of December, 1898, wherein it is provided that the property rights of private establishments or associations having legal capacity to acquire and possess property, and especially the rights of property secured by copyrights and patents acquired by

Spaniards in the Philippine Islands at the time of the ratification of said treaty shall not be impaired but shall continue to be respected.

GILBERT, COHN & FISHER,
pp. CHARLES C. COHN,
Attorneys for Plaintiff and Appellant.

131 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellant,

vs.

ALHAMBRA CIGAR AND CIGARETTE MANUFACTURING COMPANY, Defendant and Appellee.

Assignment of Errors.

The plaintiff, Compañia General de Tabacos de Filipinas, praying an appeal from the final judgment of this Court in the above entitled cause, unto the Supreme Court of the United States, specifies and assigns for error:

I.

The Supreme Court of the Philippine Islands erred in reversing the judgment of the Court of First Instance of Manila and in dissolving the perpetual injunction issued thereon.

II.

The said Court erred in concluding that a judgment for a perpetual injunction in favor of plaintiff, based upon erroneous grounds, cannot be sustained upon other grounds alleged in plaintiff's complaint, unless the successful plaintiff has appealed from the judgment in its favor.

132 III.

The said Court erred in holding that a right of action for the violation of a trademark or trade-name or to restrain unfair competition does not exist independently of express statutory provision and that such right of action is limited to the express terms of statutory law.

IV.

The said Court erred in holding that an action for the violation of a trade-name cannot be carried on in conjunction with an action

for unfair competition, based on a similarity to the plaintiff's trade-name.

V.

The said Court erred in holding that the action for unfair competition is necessarily based upon the general appearance of the merchandise as exposed for sale.

VI.

The said Court erred in holding that no trade-name can legally exist, or be legally enforced save under and by virtue of the terms of Act 666 U. S. Philippine Commission.

VII.

The said Court erred in holding that the plaintiff's action based on unfair competition should be dismissed.

VIII.

The said Court erred in holding that the doctrine of secondary meaning, as applied in the law of trade-marks, has no application in the law of trade-names.

133

IX.

The said Court erred in holding that an action for unfair competition, based upon the similarity of plaintiff's and defendant's trade-names, will not lie.

X.

The said Court erred in declining and refusing to recognize and enforce the property rights of the plaintiff in the trade-name "La de la Isabela."

XI.

The said Court erred in declining and refusing to consider and determine the cause of action duly presented by the pleadings and the evidence based upon the claim that the use of the trade-name "Isabela" is an infringement of the trade-name "La Flor de la Isabela."

XII.

The said Court erred in holding that a trade-name cannot be acquired by appropriation and user, but only by registration or prescription.

XIII.

The said Court erred in holding that the adoption of Act 666 of the United States Philippine Commission, prohibiting the appropriation as trade-names of geographical names, operated as a forfeiture of the property rights of plaintiff in its trade-name, existent at the date of the Treaty of Paris, and guaranteed thereby.

134 XIV.

The said Court erred in finding that the trade-name "Isabela" was never used as a separate and distinct word to designate the products of plaintiff's factory.

XV.

The said Court erred in finding that the real names of the products of plaintiff designated as Isabela Cortos—Isabela Largos, and Isabela Largos is not an appropriation of said name, but is an accidental use due to limits of space.

XVI.

The said Court erred in holding that the use of the word "Isabela" as a trademark or trade-name is not an infringement of the trade-name "La Flor de la Isabela."

XVII.

The said Court erred in holding that the Royal Decree of 1888 of the Kingdom of Spain prohibits the use of a geographical name as a trade-name.

XVIII.

The Court erred in holding that the right to the exclusive use of the word "Isabela" is not infringed by the use of the words "Alhambra Isabelas."

XIX.

The Court erred in holding that a trademark or trade-name cannot be infringed without the use of all of the words and terms thereof in the infringing mark or name.

GILBERT, COHN & FISHER,
pp CHARLES C. COHN,
Attorneys for Plaintiff and Appellant.

135 That thereafter to-wit: on the 24th day of January, 1917, the said appeal was duly allowed by the indorsement upon the foregoing petition for appeal, as follows:

"Allowed January 24, 1917.

SHERMAN MORELAND,
Associate Justice of the Supreme Court of the Philippine Islands."

That thereafter, to-wit: on the 25th day of January, 1917, the following bond on appeal was duly filed by plaintiff and appellant, after the approval thereof by said Associate Justice of said Court.

(Title Court and Cause.)

Know all men by these presents: That we, Compañia General de Tabacos de Filipinas, as principal, and Teodorico Correa of Manila and Carlos Aparici of Manila as sureties, are held and firmly bound unto the Alhambra Cigar and Cigarette Manufacturing Company in the full and just sum of Five Hundred ($500.00) Dollars, United States Currency, to be paid to the said Alhambra Cigar and Cigarette Manufacturing Company, its attorneys, successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of January, in the Year of Our Lord, one thousand nine hundred and seventeen.

Whereas, lately at the Supreme Court of the Philippine Islands in a suit pending in said Court between the Compañia General de Tabacos de Filipinas, as plaintiff, and the Alhambra Cigar and Cigarette Manufacturing Company, as defendant, a decree was rendered against the said Compañia General de Tabacos de Filipinas
136 and the said Compañia General de Tabacos de Filipinas having obtained an appeal and filed a copy thereof in the clerk's office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Alhambra Cigar and Cigarette Manufacturing Company, citing and admonishing the latter to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington not less than one hundred and twenty days from the date of said citation;

Now the condition of the above obligation is such that if the said Compañia General de Tabacos de Filipinas shall prosecute its said appeal to effect and answer all damages and costs if it fail to make said plea good, then the above obligation to be void; else to remain in full force and virtue.

In witness whereof the above named principal and sureties have hereunto set their hands and seals at Manila in the Philippine Islands on this 25th day of January, 1917.

COMPAÑIA GENERAL DE TABACOS
DE FILIPINAS,
El Administrador General,
pp. A. MALVEHY,
Principal.
F. CORREA,
Surety.
C. APARICI,
Surety.

Approved by
SHERMAN MORELAND,
Associate Justice of the Supreme Court of the Philippine Islands.

137 That thereafter, to-wit: on the 27 day of January, 1917, the following citation duly issued, was served upon the defendant and appellee herein in accordance with the written acknowledgment of said service endorsed in writing thereon:

(Title, Court and Cause.)

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Alhambra Cigar and Cigarette Manufacturing Company: Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within one hundred and twenty days from the date of this writ, pursuant to an appeal duly allowed by the Supreme Court of the Philippine Islands and filed in the clerk's office of said court on the 22 day of January, A. D. 1917, in a cause wherein the Compañia General de Tabacos de Filipinas is appellant and you are appellee, to show cause, if any, why the decree rendered against the said appellant as in said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 22 day of January, A. D. 1917.

[S'g'd] SHERMAN MORELAND,
Associate Justice of the Supreme Court of the Philippine Islands.

Service of a copy of the within citation is hereby admitted this 27 day of January, 1917.

[S'g'd] ROHDE & WRIGHT,
Attorneys for the Alhambra Cigar and Cigarette Manufacturing Co.

138 SUPREME COURT OF THE PHILIPPINE ISLANDS,
Manila, Philippine Islands, ss:

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing 137 pages contain true, full and complete copies of all the pleading, order, evidence and decisions, including the opinion and order for judgment of this Supreme Court, in a certain cause wherein Compañia General de Tabacos de Filipinas was plaintiff, and Alhambra Cigar and Cigarette Manufacturing Company was defendant, saving and excepting those parts thereof which for the sake of clearness and brevity were omitted herefrom by agreement of counsel.

I do further certify that the original citation with acknowledgment of service are hereunto attached and herewith returned.

In testimony whereof I hereto subscribe my name and affix the seal of the Supreme Court of the Philippine Islands at Manila, P. I.,

this 14th day of February, A. D. one thousand nine hundred and seventeen.

V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

[Seal. Corte Suprema Islas Filipinas.]

Now comes the parties to the above entitled cause by their respective attorneys, and stipulate and agree that the foregoing transcript of the record of this cause is correct, and that it is complete,
139 saving such omissions as have been made by their consent.

Manila, P. I., February 14, 1917.

ROHDE & WRIGHT,
Attorneys for Alhambra Cigar and
Cigarette Manufacturing Company.
COHN AND FISHER,
pp. F. C. FISHER,
Attorneys for Compañia General
de Tabacos de Filipinas.

140 THE UNITED STATES OF AMERICA.

Supreme Court of the Philippine Islands.

March 4, 1916. File No. 10251.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,

versus

ALHAMBRA CIGAR & CIGARETTE MANUFACTURING CO., Defendant and Appellant.

Judgment.

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 10th day of February, A. D. nineteen hundred and sixteen.

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the 24th day of August, nineteen hundred and fourteen, and from which the above-entitled appeal was taken, be, and the same is hereby reversed and

the perpetual injunction issued thereon is dissolved. Without costs in this instance.

[Seal. Corte Suprema, Islas Filipinas.]

[S'g'd] V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

Certified correct:

V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

141 UNITED STATES OF AMERICA.
Philippine Islands:

In the Supreme Court of the Philippine Islands.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellant,

vs.

ALHAMBRA CIGAR AND CIGARETTE MANUFACTURING COMPANY, Defendant and Appellee.

Petition for Appeal.

The plaintiff Compañia General de Tabacos de Filipinas, conceiving itself aggrieved by the judgment made and entered on the 10th day of February, 1916, in the above entitled case, does hereby appeal from the said judgment to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the Supreme Court of the United States.

The above entitled action is one in which is involved the treaty of the United States with the Kingdom of Spain, executed at Paris on the tenth day of December, 1898, wherein it is provided that the property rights of private establishments or associations having legal capacity to acquire and possess property, and especially the
142 rights of property secured by copyrights and patents acquired by Spaniards in the Philippine Islands at the time of the ratification of said treaty shall not be impaired but shall continue to be respected.

GILBERT, COHN & FISHER,
pp. CHARLES C. COHN,
Attorneys for Plaintiff and Appellant.

Allowed January 22, 1917.

SHERMAN MORELAND,
Associate Justice Supreme Court.

143 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellant,

vs.

ALHAMBRA CIGAR AND CIGARETTE MANUFACTURING COMPANY, Defendant and Appellee.

Assignment of Errors.

The plaintiff, Compañia General de Tabacos de Filipinas, praying an appeal from the final judgment of this Court in the above entitled cause, unto the Supreme Court of the United States, specifies and assigns for error:

I.

The Supreme Court of the Philippine Islands erred in reversing the judgment of the Court of First Instance of Manila and in dissolving the perpetual injunction issued thereon.

II.

The said Court erred in concluding that a judgment for a perpetual injunction in favor of plaintiff, based upon erroneous grounds, cannot be sustained upon other grounds alleged in plaintiff's complaint, unless the successful plaintiff has appealed from the judgment in its favor.

144 III.

The said Court erred in holding that a right of action for the violation of a trademark or trade-name or to restrain unfair competition does not exist independently of express statutory provision and that such right of action is limited to the express terms of statutory law.

IV.

The said Court erred in holding that an action for the violation of a trade-name cannot be carried on in conjunction with an action for unfair competition, based on a similarity to the plaintiff's trade-name.

V.

The said Court erred in holding that the action for unfair competition is necessarily based upon the general appearance of the merchandise as exposed for sale.

VI.

The said Court erred in holding that no trade-name can legally exist, or be legally enforced save under and by virtue of the terms of Act 666 U. S. Philippine Commission.

VII.

The said Court erred in holding that the plaintiff's action based on unfair competition should be dismissed.

VIII.

The said Court erred in holding that the doctrine of secondary meaning, as applied in the law of trade-marks, has no application in the law of trade-names.

145 IX.

The said Court erred in holding that an action for unfair competition, based upon the similarity of plaintiff's and defendant's trade-names, will not lie.

X.

The said Court erred in declining and refusing to recognize and enforce the property rights of the plaintiff in the trade-name "La Flor de la Isabela."

XI.

The said Court erred in declining and refusing to consider and determine the cause of action duly presented by the pleadings and the evidence based upon the claim that the use of the trade-name "Isabela" is an infringement of the trade-name "La Flor de la Isabela."

XII.

The said Court erred in holding that a trade-name cannot be acquired by appropriation and user, but only by registration or prescription.

XIII.

The said Court erred in holding that the adoption of Act 666 of the United States Philippine Commission, prohibiting the appro-

priation as trade-names of geographical names, operated as a forfeiture of the property rights of plaintiff in its trade-name, existent at the date of the Treaty of Paris, and guaranteed thereby.

146 XIV.

The said Court erred in finding that the trade-name "Isabela" was never used as a separate and distinct word to designate the products of plaintiff's factory.

XV.

The said Court erred in finding that the real names of the products of plaintiff designated as Isabela Cortos-Isabela Largos, and Isabela Largos is not an appropriation of said name, but is an accidental use due to limits of space.

XVI.

The said Court erred in holding that the use of the word "Isabela" as a trademark or trade-name is not an infringement of the trade-name "La Flor de la Isabela."

XVII.

The said Court erred in holding that the Royal Decree of 1888 of the Kingdom of Spain prohibits the use of a geographical name as a trade-name.

XVIII.

The Court erred in holding that the right to the exclusive use of the word "Isabela" is not infringed by the use of the words "Alhambra Isabelas."

XIX.

The Court erred in holding that a trademark or trade-name cannot be infringed without the use of all of the words and terms thereof in the infringing mark or name.

GILBERT, COHN & FISHER,
pp. CHARLES C. COHN,
Attorneys for Plaintiff and Appellant.

147 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellant,

vs.

ALHAMBRA CIGAR AND CIGARETTE MANUFACTURING COMPANY, Defendant and Appellee.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Alhambra Cigar and Cigarette Manufacturing Company: Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within one hundred and twenty days from the date of this writ, pursuant to an appeal duly allowed by the Supreme Court of the Philippine Islands and filed in the clerk's office of said court on the 22nd day of January, A. D. 1917, in a cause wherein the Compañia General de Tabacos de Filipinas is appellant and you are appellee, to show cause, if any, why the decree rendered against the said appellant as in said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

148 Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 22nd day of January, A. D. 1917.

SHERMAN MORELAND,
Associate Justice of the Supreme Court of the Philippine Islands.

Service of a copy of the within citation is hereby admitted this 27 day of January, 1917.

ROHDE & WRIGHT,
Attorneys for the Alhambra Cigar and Cigarette Manufacturing Co.

149 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

No. 12,079. R. G. No. 10251.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS,

vs.

ALHAMBRA CIGAR & CIGARETTE MANUFACTURING CO..

Now come the parties to the above entitled cause by their undersigned attorneys and join in requesting this Honorable Court to direct that the originals of the exhibits here below mentioned be transmitted to the Supreme Court of the United States for consideration in connection with the record on the appeal taken by plaintiff against the judgment in favor of defendant rendered herein. This petition is based upon the ground that an inspection of the said exhibits is necessary to enable the Supreme Court of the United States properly to review the evidence, inasmuch as the same consist principally of pictorial representations of which no adequate idea can be given by a written description.

The said exhibits are as follows:
Plaintiff's Exhibit "A."
Defendant's Exhibit 3, pp. 1, 2 and 3.
Defendant's Exhibit 14.
Defendant's Exhibit 17.
Manila, P. I., February 9, 1917.

COHN & FISHER,
pp. F. C. FISHER,
Attorneys for Compañia General de Tabacos de Filipinas.
ROHDE & WRIGHT,
pp. WM. F. ROHDE,
Attorneys for Alhambra Cigar and Cigarette Mfg. Co.

150 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 10251.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellant,

versus

ALHAMBRA CIGAR & CIGARETTE MANUFACTURING COMPANY, Defendant and Appellee.

Order.

Upon consideration of the petition contained in the stipulation filed by the attorneys for the Compañia General de Tabacos de Filipinas and for the Alhambra Cigar & Cigarette Manufacturing Company, the Clerk of this Court is hereby ordered to transmit the plaintiff's exhibit A, and the defendant's exhibits 3 (pages 1, 2 and 3), 14 and 17 to the Supreme Court of the United States, together with the transcript of the above-entitled case.

Manila, P. I., March 2, 1917.

SHERMAN MORELAND,
Associate Justice of the Supreme Court of the Philippine Islands.

Copies forwarded: Messrs. Cohn & Fisher, Messrs. Rohde & Wright.

Endorsed on cover: File No. 25,930. Philippine Islands, Supreme Court. Term No. 1100. Compañia General de Tabacos de Filipinas, appellant, vs. Alhambra Cigar and Cigarette Manufacturing Company. Filed April 30th, 1917. File No. 25,930.